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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

BRIEF AND APPENDIX

SALVATORE MORETTI,
Petitioner

vs.

MAYOR JOHN ZISA AND THE HACKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSACK BOARD OF ADJUSTMENT; PATRICIA FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO-HACKENSACK PROSECUTOR; HACKENSACK WATER CO.; G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT INC.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION BY PLAINTIFF-APPELLANT
SALVATORE MORETTI, PRO SE
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414

QUESTIONS PRESENTED FOR REVIEW

1. What official policies or customs by a municipality constitute deliberate indifference to housing complaints under 42 USC Section 1983?
2. Does the decision by Judge Harold A. Ackerman in the case at bar comport with the Supreme Court decisions in Schrob v. Catterson, 948 F 2d.1402, Apton v. Wilson, 506 F 2d. 83(1974), and Robb v. Philadelphia, 733 F. 2d. 286 (3rd Cir. 1984)?
3. Given that the trial court dismissed this 42 USC SectIon 1983 case with jury demand on the pleadings alone, and failed to allow discovery or review the replies filed by petitioner, was there in effect a refusal to allow the amending of the complaint.
4. Did the dismissal of the case at bar, along with the companion cases, under Fed. R. Civ. P. 12(b)(6) result in summary judgment granted under Fed. R. Civ. P. 56 without notice and without procedural safeguards (such as a scheduling conference) to try relevant claims under the civil rights statutes?
5. Under what circumstances do the summary dispossess statutes violate 42 USC Section 1983 and produce housing dislocation?
6. In the case at bar, does failure to train constitute deliberate indifference by municipal employees under 42 USC Section 1983 in housing disputes.
7. Did plaintiff-appellant's complaint fairly apprise defendants of consititutional and civil rights violations?
8. Does the payment of real estate taxes to the municipality derived from federal/state programs (AFDC, SSI, etc) provide federal statutory rights which the trial court failed to consider, particularly insuring a fair rate of return on investment.
9. Did judge Ackerman's interpretation that a conspiracy may have been alleged suggest the complaint should have been amended to include counts alleging violations of federal monopoly or antitrust laws, 42 USC Section 1985, or the Sherman anti-trust act?

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JUDGMENTS SOUGHT TO BE REVIEWED

1. Judgement by Hon. Harold A. Ackerman, United States District Court, Newark. New Jersey. May 6, 1993. Order states that rspondents' motions to dismiss are granted, staying the dismissal for fifteen days so that petitioner may amend the complaint. Accompanying Order is a 33 page opinion. The difficulty in amending the complaint is evidenced by the Order filed January 21, 1993 by Magistrate Stanley R. Chesler stating that all defense motions to dismiss shall be filed by February 5, 1993, and all discovery shall be stayed pending the disposition of said motions.
2. Order filed January 21, 1993 by Magistrate Judge Stanley R.Chesler prohibiting all further discovery pending the filing of motion to dismiss.
3. Order dated June 21, 1992 by Honorable Harold A. Ackerman, stating that "it is therefore on this 21st day of June, 1993 ordered that plaintiff's complaint is dismissed with prejudice.
4. Order dated February 10, 1994 United States Court of Appeals for the Third Circuit, No. 93-5416, "adjudged and ordered that the judgment of the district court be and is hereby affirmed.
5. Order dated March 17, 1994 United States Court of Appeals for the Third Circuit, No. 93-5416, "the petition for rehearing is denied."
6. Mandate dated March 28, 1994, District Court Docket No. 92-4206 (HAA), Court of Appeal Docket No. 93-5416, costs awarded against appellant in the sum of $242.30.

JURISDICTIONAL STATEMENT

Petitioner Salvatore Moretti seeks review in the Supreme Court of the United States of his complaint under the jurisdiction of the Civil Rights laws, namely 42 USC Section 1981, 1982, 1983, and 1985, and due to violations of federal constitutional rights protected by the fourth amendment - search warrants, the sixth amendment - right to counsel, confrontation of witnesses, compulsory process, the seventh amendment - trial by jury, the eighth amendment - excessive bail, and the fourteenth amendment - due process and equal protection.

Petitioner filed his complaint in the United States District Court of New Jersey on October 6, 1992, Docket No. 92-4206(HAA). That complaint was dismissed with prejudice by the Honorable Harold Ackerman by order of June 21, 1993. The dismissal was on the pleadings alone.

Petitioner filed his Noice of Appeal with the Court of Appeals on July 7, 1993. The Notice of Docketing dated July 16, 1993 was as No. 93-5416. The Court of Appeals for the Third Circuit in Philadelphia, Pennsylvania rendered decision on February 10, 1994 affirming the judgement of Hon. Harold Ackerman. Upon plaintiff's petition for rehearing en banc, the court denied rehearing on March 17, 1994.

STATEMENT OF THE CASE

Petitioner filed a complaint in the United States district court in Newark, New Jersey on October 6, 1992, Docket No. 92-4206 (HAA). Jurisdiction of the court was invoked pursuant to 42 USC Section 1981, 1982, 1983, 28 USC Section 1343(3) as well as constitutional violations of rights protected under the fourth amendment (searches), sixth amendment (right to counsel, confrontation of witnesses, compulsory process), seventh amendment (trial by jury), eighth amendment (excessive bail), and fourteenth amendment (due process and equal protection). Petitioner is the owner of the oldest apartment house on Park Stret located in the county; the assessed value has increased $543,000 with no changes in the building. This over-assessment works a distinct disadvantage to renters 50% of whom are from minority groups and receive welfare, supplemental security income (SSI), AFDC, etc. Pervasive fire and police inspections have resulted in dis-investment even in new buildings - the adjacent building was forced in receivership.

The respondent City of Hackensack employs the respondent water company to provide water and do water searches, resulting in a failure to provide an internal auditing for accuracy of water charges. When petitioner learned his water charges were double the norm he demanded an explanation. His water was shut off and he was jailed while the municipal council passed resolution 260 which fixed the charges as given. The state court system dismissed the complaints petitioner within.

Under state law evictions are governed by a summary dispossess statute, providing non-jury trials for tenants. Thirty recent evictions (averaging $1,000 in arrears per tenant) resulted in high turn-over. Several of those evicted received subsidies. A noticeable change occurred in March, 1993. Ellen L. Koblitz (former of the public defenders office and lawyer to petitioner's tenants) was appointed presiding judge of the special civil part, replacing Ralph A. Polito. She nullified Judge Polito's orders in the water company case, the Fields case, the Travis case, and

the Ballard case. She granted judgment in favor of the water company ($6,655), fined petitioner $2,070.40 for filing a complaint for back rent (the Fields case - the tenant owed $2,500, and was housed due to the order of Polito awaiting fair hearing by DHS), and awarded other moneys or prevented their collection totalling over $20,000. The water company case was tried in the municipal court by Louis Dinice, who is also the judge in South Hackensack and Little Ferry. He is listed as part-time, but receives $61,000 per year; he is shown as a practicing lawyer at 433 Essex St., Hackensack in the state lawyers manual. Petitioner was jailed by Dinice during oral argument on a motion in the water case while appearing before a state Superior Court Judge. Complaints were filed in the U. S. District Court. The dismissal of the Moretti v. Zisa et al. case and its stalemating with no discovery, no scheduling conference, etc. was exactly duplicated in the dismissal of the Dinice case on September 13, 1993 and the State of New Jersey case on March 7, 1994 (both civil rights cases were dismissed in the pleading stage - with no discovery).

The complaint discusses at pages 18-22 a typical tenant complaint handled by the city; a tenant who bounced four checks totaling $3,025.86 complained of "odors", the health department could not identify the origin of the odors, but Dinice fined plaintiff $525. Under state law, jurisdiction lies in the special civil part, not the muncipal court. Other cases (including break-ins at 390 Park St., Apt. 397-D, 391-G, 391-I, 397-J, 397-F, etc.), involving assault and battery against petitioner and his tenants were not heard at all by the municipal court, e.g. the Osuji case, the Fayehun case, the Stedtler case.

Petitioner had secured the services of New Jersey lawyers in matters such as those above, but this ended when one of these lawyers was suspended from the practice of law due to legal malpractice - failing to serve the complaints filed. The legal malpractice complaint filed by plaintiff was dismissed by the state court. Currently the lawyer, Hollis, a Hackensack political candidate, was suspended from the practice of law for 3 years in 1994.

C. Morrissey and the Police Department broke down the door of 397-B Park Street in order to gain entry to that apartment, while petitioner stood by, advised that he would be arrested if he touched the door. Henry Amoroso "prosecuted" the water case, advised the judge to prohibit discovery. Gentile paid an inflated price ($875,000) for a house which had fallen into disuse, intending to use it after $100,000 of repairs as a funeral parlor. The Hackensack board of adjustment awarded a variance to use the property for that funeral use adjacent to petitioner's property, despite its R-3B zone which restricts such use.

Respondent Gutterman-Musicant, Inc. operates a funeral parlor at 402 Park Street; it had operated a psychiatric halfway house at 387 Park Street. The building was demolished, and the lot was purchased by petitioner who has been unable to develop the property due to adverse neighborhood influences. Defendant Gentile operated a psychiatric halfway house known as Project Advance at 316 Union Street. 111 Passaic Street, adjacent to the funeral property, burned down in a suspicious fire; 390 Park Street suffered a fire.

Petitioner filed his notice of appeal on July 8, 1993 with the Court of Appeals of the Third Circuit in Philadephia, Pennsylvania. Judge Ackerman claimed that he considered only the complaint - as required under Fed. R. Civ. P. 12(b)(6). However, petitioner had submitted lengthy replies to each of the answers filed by the respondents. These replies, disputed numerous contentions in the answers and appended documents proving inconsistencies. The lengthy 33 page opinion by Judge Ackerman reflects the failure by the court to read these replies. The federal rules of civil procedure provide for extensive discovery to take place at Fed. R. Civ. P. 26, Fed. R. Civ. P 27, Fed R. Civ. P 28, Fed. R. Civ. P 29, Fed. R. Civ. P 30, Fed. R. Civ. P 31, Fed. R. Civ. P 32, Fed. R. Civ. P 33, Fed. R. Civ. P 34, Fed. R. Civ. P 35, Fed. R. Civ. P 36, Fed. R. Civ. P 37. Despite service of interrogatories, no answers were provided.

Judge Ackerman's opinion speaks in terms of isolated events: freqent "sewer back-ups", "collusion on the part of

the Council ...to park (cars) on his property," "preferential treatment" of Gentile, a taking without just compensation, municipal search warrants, threats to confiscate rent checks, and so forth. Failing to interrelate each of these events, results in the complaint viewed as a a catalog of disconnected ideas - none is evidential and certainly together they lack constitutional dimension. The conclusions of law/fact in the May 8, 1993 opinion follow: 1. Gentile simply obtained a zoning variance (p. 12). Dismissed. 2. Zisa is not mentioned in the complaint (p. 13). Dismissed. 3. The council conspired to fix a high assessment (p.14). Dismissed. 4. Gutterman parked on property (p. 17). Dismissed. 5. Farlie signed a health complaint - (p. 20). Dismissed. 6. No official policy or custom is alleged by the health department susceptible of 42 U.S.C. Section 1983 review. (p. 22) Dismissed. 7. "Breaking down doors in his apartment complex does not rise to the level of a constitutional violation." (p. 22) Dismissed. 8. "No allegation that the Fire Department caused any harm to Moretti either through official policy or custom." (p. 23) - Dismissed. 9. Carucci. Dismissed. 10. Police - his allegations are conclusory. (p. 25) Dismissed. 11. Morrissey - was merely listed in the caption. (p. 25) [p. 15, 16, 17, 47 describes two policemen breaking into 397-B. Dismissed. 12. Amoroso would be entitled to absolute immunity (p. 27). Dismissed. 13. Board of Adjustment - "does not rise to the level of a constitutional violation." (p. 27); Dismissed. 14. Hackensack Water Company - not under color of law. Dismissed (p. 29). Fact - $17,000 for 5.9 million gallons of water is a penalty. 15. Gutterman-Musicant not a state actor, Dismissed.(p.31)

Judge Ackerman allows for amending of the complaint, but to what result. As Judge Ackerman notes, rather than amending, petitioner submitted a 69 page brief.

The Court of Appeals affirmed the decision of the trial court on February 10, 1994, without comment. Upon petition for rehearing en banc the Court of Appeals denied rehearing on March 17, 1994. On March 28, 1994, the Court of Appeals taxed $242.30 against petitioner as costs.

ARGUMENT IN FAVOR OF GRANTING THE WRIT OF CERTIORARI

POINT ONE

BY ENTERING A SCHEDULING ORDER ON JANUARY 21, 1993, MAGISTRATE CHESLER STALLED DISCOVERY, AND PROHIBITED AMENDING OF THE COMPLAINT, WHICH IS PROSCRIBED UNDER THE CASE LAW OF THE UNITED STATES SUPREME COURT.

On January 5, 1993, U. S. Magistrate Judge Stanley R. Chesler conducted a scheduling conference, the only conference in which the parties or their representatives met in the United States District Court. There were no settlement negotiations. There was no discovery exchanged, although plaintiff-appellant had served interrogatories upon the defendants-respondents. In fact, the hearing was abruptly terminated and the participants received a form of order drafted by Scott Topolski on behalf of the municipal defendants (exclusive of George Diana and the Board of Adjustment) stating that all defense motions were to be filed by February 5, 1993, and "all discovery shall be stayed pending the disposition of said motions." The order was signed January 21, 1993, just three months after the complaint was filed (October 6, 1992). All defendants with the exception of Gutterman-Musicant Funeral Directors filed motions under Fed. R. Civ. P 12(b)(6) and Fed. R. Civ. P. 11.

Fed. R. Civ. P 16: Pretiral Conferences; Scheduling; Management, states as follows:

(a) Pretrial Conferences: Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a converence or conferences before trial for such proposes as

(1) expediting the disposition of the action;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the **settlement** of the case.

(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistate judge...[shall] enter a scheduling order that limits the time:

(1) to join other parties and to **amend the pleadings**;

(2) to file motions; and

(3) to **complete discovery**

Fed. R. Civ. P. 26 General Provisions Governing Discovery; Duty of Disclosure.

(a) Required Disclosures: Methods to Discover Additional Matter.

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to the other parties; (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information...

No such discovery was provided by the respondents, in violation of the federal rules of court.

Clearly, discovery had yet to begin. Replies to answers by the several defendants were lengthy, Replies were as shown:

1. Reply to Answer by City Council, and Muncipal defendants, dated Nov. 25, 1992.....10 pages
2. Reply to Motion to Dismiss submitted by Gentile, dated December 18, 1992.....59 pages
3. Reply to Anser by Gutterman-Musicant, dated November 29, 1992.....20 pages
4. Reply to Answer by Defendant Hackensack Water Col., dated December 10, 1992.....100 pages

Up to the date of the scheduling conference, the plaintiff-appellant was busily responding to the answers and serving interrogatories. As soon as he was served the order signed by Magistrate Chesler, he replied on February 25, 1993 with a

detailed statement as follows:

"Enclosed find plaintiff's opposition papers filed to preserve the complaint and proceed to discovery. The several defendants who have filed motions to dismiss have **failed to answer interroatories**... I have attached **interrogatories** to my brief in the expectation that the motion on March 8, 1993 can consider providing answers to them **prior** to consideration of any dismissal motions thus far submitted."

On March 8, 1993, there was no oral argument, only plaintiff appeared for the motion hearing. In the brief enclosed, petitioner stated that:

"Scott Topolski (on behalf of the municipal defendants) has stated in various papers submitted to the Federal District Court that there are no interrogatories outstanding as far as his clients are concerned. Clearly, that is incorrect. Topolski, refusing all discovery requests, then reasons that there is nothing to discover, hence seeks dismissal and sanctions. Topolski also seeks to differentiate between Fed. R. Civ. P. 12(b) and Fed. R. Civ. P. 56 - Summary Judgment, claiming some petitioner plaintiff error. Again, petitioner has detailed why he opposes imposition of summary judgment in a complaint which has not even proceeded through discovery. Magistrate Chesler conducting the scheduling conference suggested that if there were issues in dispute needed for the motions to be met, then plaintiff could cite Fed. R. Civ. P. 12 (e): point out the details desired. Clearly, the details desired are the answers to interrogatories, the transcripts which are due from the defendants and which have not been received, such as the proceedings before the municipal court on the water case, etc. ...In the case sub judice, discovery is non-existent, yet the respondents were allowed to file motions to dismiss....The [Hackensack] Council merely decided to collect under the billing [by passing Resolution 260] and resolved to act through the municipal judge who ordered the breaking into of plaintiff's home and his arrest, and further,

incarceration....The attorney general's office submitted motion papers to dismiss claiming the state courts lacked jurisdiction as well, and bases this on the state court judgement. The return date of the attorney general's motion was a non-existent date on the motion calender - the papers were also served three weeks late and did not allow for opposing papers to be submitted. **Oral argument was not permitted...**"

Note, that there was no cross-examination allowed to oppose the Fed. R. Civ. P. 12(b)(6) motions, hence there was no face to face confrontation, no sworn testimony, no right of witnesses to confront the jury.

On March 13, 1993, plaintiff submitted a lengthy brief arguing for the existence of facts in dispute, [questioned by the respondents], which states:

As to the Hackensack Water Co. & Resolution 260:

[Exhibit] D-7 clearly shows that twelve month costs [for water] were $3860, $2400, and $2149 for comparable sized apartment buildings...My costs were $7,451, clearly three times or more over the comparables. We have a bill dispute.

Performance of Water Searches

municipal engineers or tax assessors normally do water searches. Reply By the Court: **Quite frankly, I don't care if you have a billing dispute.**

Fraudulent Billing

Mr. Moretti: I think its an issue of a fraudulent bill.

Judge Dinice: **It might be**...I won't take into consideration what you owe the Hackensack Water Company, even if you've been bilked.

Breaking into 397-B Park St.

On June 14, 1992 at 12:30 p.m. Officers C. Morrissey and Thomas Salcedo broke into Apt. 397-B. Judge Ackerman dismissed as to this incident because he did not read or consider the March 13, 1993 Brief in Opposition to **Fed. R. Civ. P** 12(b) (6) Motions.

Gentile Funeral Variance

Gentile advanced $975,000 [only] weeks prior to the award of the variance ($875,000 for the purchase). No witnesses were called by the Board of Adjustment. A 1,999 square foot addition was required.

The fact is that petitioner failed to receive discovery, and sanctions should have been imposed upon the respondents. It was for the respondents to prove there were no fact disputes, but since **they failed to serve interrogatories** (and receive answers) **or conduct depositions**, they could not intelligently file motions to dismiss under Fed. R. Civ. P. 12(b)(6).

On April 12, 1993, there was no oral argument; no one appeared except plaintiff. Instead, Judge Ackerman dismissed the complaint under **Fed. R. Civ. P.** 12(b)(6) **on the papers**.

The failure of the federal district court to proceed at the settlement conference to effect resolution is not based on limitations on its power. In G. Heilman Brewing Co., Inc. v. Joseph Oat Corp. 871 F.2d 648, the trial court was presented with a complex case in which the parties refused to settle. Although Fed. R. Civ. P. 16 requires only that the attorneys of record and pro se litigants appear, the court of appeals held that the trial court is not limited in its construing of the rule to effectuate settlement. Had the parties themselves attended this pretrial conference, the possibility exists that the case at bar would have settled.

If discovery had proceeded, then the allegations in the complaint would be proven or disproven, and if disproven, then it would be possible to amend. In this case, the petitioner was a resident property owner of twenty years duration who ran for the municipal court, and was a law school graduate of ten years duration - the allegations had foundation.

In the case of Ronzani v. Sanofi S.A., 899 F. 2d 195 (2d Cir. 1990), the plaintiff filed a complaint under Sect-

ions 10(b) and 10b-5 of the Security Exchange Act. Ronzani filed an amended pleading under Fed. R. Civ. P. 15(a) on October 20, 1988; on January 29, 1989 Sanofi moved to dismiss the amended complaint pursuant to Fed. R. Civ. P. 9(b), 12(b)(1) and 12(b)(6). The appeals court held that Fed. R. Civ. P 15(a) requires that "leave [to amend] shall be freely given when justice so required." See **Foman v. Davis,** 371 U.S. 178, 182 (1962).

The case of Paolino v. Channel Home Center, 668 F.2d 721 (1981) concerned a complaint alleging that Paolino developed a device which reclaimed waste heat from flues. The complaint was dismissed for failure to state a claim upon which relief may be granted. The Third Circuit Court of Appeal reversed and remanded, stating:

"Since Paolino's complaint was dismissed at the pleadings stage we must determine whether in the light most favorable to him 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct 99, 101, 2 L.Ed.2d 80 (1957).

In the case at bar, petitioner has paid real estate taxes for twenty consecutive years, currently at $24,897 per year. A trust has grown up that water would be available at less than $7,451 per year - resulting in the annual cost of water and taxes at $32,348. per year. Capitalized net income based upon wages and rents in the market area for comparable apartments does not support an assessment of $750,000 [which is currently on the property].

POINT TWO

JUDGE ACKERMAN'S JUDGMENT DID NOT CONSIDER THE REPLIES FILED PRIOR TO THE SCHEDULING CONFERENCE, THEREBY DENYING THE EXISTENCE OF A FACT DISPUTE UNDER FED. R. CIV. P. 12 (b)(6).

The complaint filed October 6, 1992 is lengthy (48 pages) and detailed (ten separate actions are referenced with the same defendants over three decades, C-2541-78, C-4640-78, C-545-79, L-5847-78, L-200600-80, BER-L-8191-92, DC-705907-92, 92-2449, DC-700124-92, L-48567-79. Yet the defendants claim lack of notice.

Defendant Gentile served his Answer and **Counterclaim** on November 3, 1992 demanding sanctions under Fed. R. Civ. P. 11. A November 3 brief accompanied the Counterclaim ("plaintiff's complaint is replete with errors and omissions...plaintiff's complaint is outrageous, misguided and completly without merit ...impose sanctions for filing the complaint"; this brief was supplemented by a December 4 brief in support of a motion to dismiss under rules 11 and 12(b) (Moretti's misstatements are both blatant and numerous). Under Fed. R. Civ. P. 12(a) "the plaintiff shall reply to a counterclaim in the answer within 20 days after service of the answer." Plaintiff did so.

On November 2, 1992, Scott Topolski served an answer on behalf of numerous defendants (who should have been represented by separate legal counsel), the police, the health department, the city council, the prosecutor, the fire department; in the Court of Appeals Topolski represented Gentile (applicant for a funeral home), as well. No conflict of interest was found to exist by the trial court. All defendants demanded sanctions under Fed. R. Civ. P. 11. The municipal defendants listed 24 affirmative defenses (November 12), Gutterman-Musicant Funeral Directors 28 affirmative defenses (November 17), the Board of Adjustment 13 (November 19), the Hackensack Water Company 10 (November 5). The

answers denied even matters of record, such as Getterman-Musicant's leasing of 387 Park Street to a psychiatric half-way house, the water company's denial of plaintiff's demand to check the water meter due to errors in water billing (due to a non-functional electronic homer system), the city defendants' denial that they were negligent in handling an assault case (Osuji was charged with assault and battery) in which Hackensack judge Dinice refused to hear the case and transferred to Saddle Brook, where the wrong man showed up in court. Topolski's answer claims that any injuries were the result of plaintiff's own negligence, but it is incredible that being hit in the back of the head with a bat was the result of plaintiff's own negligence.

The city council passed resolution 260 on August 17, 1992 which stated that payments on plainitff's water bill constituted a lien on the apartment house; plaintiff was not given notice of the resolution since the judge had incarcerated him on August 17. Hackensack considers its municipal judge Dinice as part-time, at a salary of $61,241 (45,000 in Hackensack alone). He is allowed to practice law (433 Essex Street) as recorded in the 1993-1994 N. J. Lawyer's Manual. His Glen Rock home is assessed over $400,000. The state judicial code R. 1:15-1 proscribes full time judges from having law practices. Fed. R. Civ. P. 26 (a)(1) requires that initial disclosures be provided opposing counsel **without** awaiting a discovery request". Such facts were not disclosed by the municipality.

The Gentile variance was granted on July 15, 1992 by the defendant board of adjustment. The property is at 397 Union street (Block 415, lots 8D, 13 and 15A); Gentile sought 53 parking spaces some 300 feet from the funeral parlor on R-3B (restricted) land adjacent to 390 Park Street (plaintiff's house). A 1,999 square foot addition was sought as well, on what was an abandoned funeral use (3 funerals in the last year). The applicant purchased the property three weeks before award of the variance on

June 23, 1992, Deed Book 7526, page 570 for $875,000. $100,000 was required fo renovate the inactive property. What is odd about the parking portion of the variance is that land zoned B-1 (permits funeral use) one hundred feet by one hundred fifty feet (adjacent to the building) remains vacant while while land 300 feet from the building is re-zoned from R-3B (prohibits parking) to B-1 use, all due to an "historical tree." Prior to the variance, the property had only 6 parking spaces.

The handling of the Hackensack Water Company case speaks to the failure by the defendants to observe plaintiff's due process rights. The trial in municipal court began August 17, 1992 with plaintiff's arrest and the passage of resolution 260. Excerpts from the transcript of proceedings before judge Dinice follow:

Judge Dinice.

(T3-12)."This is a quasi criminal court. There are no interrogatories in the Municipal Court. There are no depositions."

(T22-10)."He's receiving a rent subsidy from the county. Why should he get money on a monthly basis and the city have to pay the water bill?" - (prosecutor Amoroso recommends appointment of a rent receiver)

(T3.10-18)"What you owe the Hackensack Water Company has absolutely no bearing on this case. And I will not take into consideration what you owe the Hackensack Water Company or whether you have a claim with the Hackensack Water Company or whether you think you've been overcharged by the Hackensack Water Company, or even if you've been bilked by the Hackensack Water Company. I don't care."

Petitioner sought testimony from other apartment house owners as to their water consumption, seeking their records on file in the assessor's office. This was not allowed. Alternatively, he introduced a survey on water

consumption, exhibits D-6 and D-7:
Salvatore Moretti.
(T5.8.24)."D-7 clearly shows that twelve month [water] costs were $3,800, $2,400, $2,149 [in the sample]. My costs were $7,451. Clearly, three times or more over the costs which I just stated...We have a billing dispute."
The municipal judge concludes the trial as follows:
Judge Dinice.
(T5.11.10)."I see, what I'd really like to do is I'd like to put you in a room, Mr. Moretti, an apartment for two weeks without water yourself."
(T5.11.13). "I'm going to fine you $500, $25 costs."
(T5.14.15). "Forty-five days in the County Jail. Take him into custody."
Salvatore Moretti.
(T5.14.17). "I have an appearance in Superior Court Law Division [on the Gentile case, BER-L-09278-92]]. within twelve hours."
Judge Dinice(T5.14.24) "I think you're going to be late."

On page 25 (5/18/93 brief) petitioner's table shows:

COMP.	GAL. THREE MTHS	COST LAST 3 MTHS	GAL. 12 MTHS	COST 12 MTHS
No. 1	348,606	$1,070	1,257,588	$3,860
No. 2	460,681	1,414	1,396,050	4,285
No. 3	208,512	640	707,132	2,416
No. 4	390,960	1,200		
No. 5	368,154	1,130	1,132,480	3,476
No. 6	231,318	710	700,144	2,149
No. 7	376,299	1,155		
No. 8	214,702	659	1,201,876	3,689
PARK CT APTS.	(THREE QUARTER)		(ACTUAL)	(ACTUAL)
Bills	681,677	$2,060	2,461,000	$7,451

Judge Ackerman objects to this 69 page brief, but acknowledges receiving it, thus a fact controversy does exist, and the dismissal must be overturned. This table shows eight comparable apartment buildings in Hackensack as to gallons of water consumed in the prior year, in comparison to the subject property, 391-397 Park St.

Consider that on May 27, 1992, Kent R. Papsun Chief of the Assistance, Board of Regulatory Commissioners, wrote as follows: "Thank you for your further letter concerning the Hackensack Water Company in reference to Park Court Apartments. Enclosed please find your check made payable to "Treasurer, State of N. J. Please be advised that this Board does not conduct 24-hour site-usage tests.

Clearly, the defendant Hackensack Water Company (and BRC in the state court), were fully notified months in advance to avert water shut-off.

Defendant Gutterman-Musicant Funeral Directors, Inc. claims in its answers on page 2:
"Gutterman-Musicant denies [the allegation on pages 24 and 25 of plaintiff's complaint herein] including any and all allegations that Gutterman-Musicant was involved with and/or commited any nuisance and/or any and all allegations that Gutterman-Musicant owned, owns, rented [to] North Jersey Friendship House, psychiatric half-way house."

On April 12 and 13, 1978 the Record newpaper stated:
"Friendship House leases the house from Gutterman-Musicant-Kreitzman funeral directors at 402 Park Street...The house at 387 Park St. [adjacent to 391 Park St., plaintiff's apartment house] is a residence for eight member of Friendship House, a psychiatric rehabilitation center."
"Friendship House leased the property in 1975 as a licensed rooming house for mentally ill persons who are patients at its treatment facilities."
Institutional uses are proscribed without prior variance approval in zone R-3B; Hollis who filed the complaint did not serve it [is publication in the newspaper service on the defendants?]; the complaint was dismissed, and a legal

malpractice case followed. The house was eventually demolished, and plaintiff purchased the property in 1984.

The reply to the Hackensack Water Company answer filed by respondent discussed the statutory protection afforded consumers under N.J. Stat. Ann. 48:19-18.1: Statement of amount of water sold in gallons on bill:
"Any bill...to a customer for water sold or supplied shall have the amount of water sold...stated thereon in gallons."
Water rates must be approved by the Board of Public Utilities, as per N. J. Stat. Ann. 48:19-18. Any over-billing would result in bills tendered reflecting over-consumption - in the case at bar 2.46 million gallons were consumed [by twenty one-bedroom one-toilet apartments] in one year costing $7,451.

Despite the foregoing factual disputes, on May 6, 1993, trial court judge Harold A. Ackerman granted the defendants motions to dismiss under Fed. R. Civ. P12(b)(6), but denied sanctions. Fifteen days were given to amend the complaint to include such matters presumably as conspiracy, immunity defenses, etc. Given that the replies had been ignored as to Morrissey's - break-in - pages 16 and 17 of the complaint, as to Mayor Zisa, petitioner could not amend. Given the nature of the replies by petitioner, the trial court could neither have considered them nor read them. It is possible that the trial court did not read the replies because they were not allowed under its literal reading of Fed. R. Civ. P. 7(a), which states in relevant part "There shall be a complaint and an answer...the court **may** order a reply to an answer."

On this basis, the opinion of the trial court must be set aside; the fifteen day stay to amend does not reveal that the replies already submitted were not considered.

While the council recognized that shutting off the water produced a constructive eviction of the tenants of the apartment house, it **refused** to comply with the applic- proceedings required in the state statutes and the New Jer-

sey adminsitrative code. Petitioner filed an order to show cause with appellate division judge Kestin on August 14, three months after filing his complaint in superior court, Docket BER-L-08191-92. On remand, petitioner was arrested addressing the trial court on August 17, 1992. Judge Harold Ackerman and the municipal defendants claim that these acts are immune. Were the acts necessary? No. Is there alleged an outstanding balance on a water bill? No. (Violation of N.J.Stat.Ann.48:19-18). Did the water company have an operating homer system? It did not. Was the water meter checked? It was not. Was the meter removed in order to destroy proof of its inaccuracy? Yes. (Violation of N.J.Admin. Code 14:3-4.10) Was a twenty-four hour consumption test performed as requested by petitioner? It was not. Was the Bureau of Regulatory Commissioners contacted, as required? (N.J.Admin. Code 14:3-7.13) It was. Did the BRC have six months to act before the shut-off? Yes. Did they act? No.

Judge Ackerman in his May, 1993 opinion (p. 19) maintains that the acts of the municipal defendants [Prosecutor Amoroso, et al.] are immune under a functional apporoach to immunity, Schrob v. Catterson, 948 F. 2d 1402, 1409 (3rd Cir 1991). Here, the prosecutor did not try the case after his colloquy with Dinice, and the judge relied upon the water company to do water searches, that is to determine outstanding obligations of customers under the statutes, i.e. N.J. Stat. Ann. 48:19-18. Sale of water; rates. (Refer to N. J. Lawyer's Manual, 1993-1994.) The judge was not concerned whether there was a fact dispute. Yet, Judge Ackerman is confronted by motions to dismiss which claim that **there is no fact dispute**. Note in this respect the municipal court testimony: T29-5.

Mr. Moretti: It's a frauulent bill --
Mr. Amoroso (the prosecutor): Your Honor --
Mr. Moretti: which charges $10,000 in the --
The Court: I don't want to hear about that.
Mr. Moretti: - last few months -
The Court: I don't want to hear about that.

Mr. Moretti: --in the last few charges and --
The Court: I don't want to hear about that.
Mr. Moretti: --it's up two hundred percent without the--
Mr. Amoroso: Judge, I just have a question.
Mr. Moretti: --people using the water--
Mr. Amoroso: We're--prior to the--
Mr. Moretti: So it's moot.
T26.2
The Court:I think he's got a case pending in Civil Court against the Hackensack Water Company...
Mr. Moretti:You're well advised of that. I'm sure you've received a copy of the motion papers that are returnable in nine days.
The Court: In the Superior Court.
Mr. Moretti: In the Law Division, yes.
The Court: Yeah. Well I have nothing to do with that.
Mr. Amoroso:The Attorney General was here earlier on that today, judge, and advised me that it was going to be dismissed or is dismissed...
T 26.22
The Court:I don't want to hear about what's going on in the Law Division and Appellate Division, All right? I'm going to decide whether you provided water to the tenants.

Prosecutor Amoroso predicts that superior court Judge Van Tassel will grant the summary judgement requested by the defendants Hackensack Water Company and BRC. The dismissal of the complaint does not occur until October 13, 1992 (BER-L-08191-92). The case was filed in the special civil part as a money dispute, DC-705903-92; it was heard by Judge Ellen Koblitz on April 16, 1993, and dismissed; it is pending in the Appellate Division, A-5699-92T3.

Since Amoroso asked no questions of any witness as a prosecutor, petitioner argues that he does not participate in the judicial phase at all. Henceforth, the judge conducts the hearing, but his only concern is whether the water company (his employee as water searcher) shut off the

water. If so then the nuisance is assumed to exist. The issue of a bill dispute is by-passed entirely, only to resurface in a conflict of interest between the judge as city and its employee water searcher. This is outside the jurisdiction of the judge, since the New Jersey Administrative Code covers the topic of water interruption in detail. The petitioner produced the facts/laws for the court in advance in a 25 page answer and third-party complaint filed in municipal court August 25, 1993.

Was the conduct of the judge/prosecutor reasonable in not investigating the case prior to the "judicial phase?" Clearly, under a functional analysis, the investigatorial stage was by-passed, the judge did not depend upon the prosecutor to prosecute the case, and since it was a judge trial there was no jury to assist. The health department was excessive before, and now again, as noted in the complaint (p.19-21).

Judge Ralph Polito entertained a summary judgment motion when he was presiding judge of the special civil part on March 1, 1993 - he denied summary judgement and was thereafter replaced by judge Koblitz. Despite a dispute over two habeas corpus motions filed on behalf of his tenant in 397 -D, Koblitz heard the four cases already considered by Polito (Fields, Travis, Ballard, and the Hackensack water company). She granted summary judgement to the water company on April 16, 1993. Petitioner claimed Koblitz was prevented from hearing these cases due to her status as a court-appointed lawyer for the tenant contrary to RPC 1.11(a). Sucessive government and Private Employment:
a lawyer shall not represent a private client in connection with a matter (2) about which the lawyer acquired knowledge of confidential information as a public officer or employee

Consider that on the one hand a tenant (397-D) was kept in jail for a year, while in another case (Rm. 2) contrary to the statute, a tenant was allowed to enter a private home and remain without payment for five weeks.

As noted above the complaint signed against Osuji re-

sulted in a municipal trial set for July 28, 1993. At that trial, Judge Dinice failed to take jurisdiction and recused himself due to an unstated conflict. He transferred the case to Saddle Brook where on October 6, 1993 the wrong man showed up and the case was dismissed. Petitioner filed in in special civil part in Bergen County on August 20, 1993, DC-012915-93. The tort complaint was never answered, it stated in part:

At 6:45 p.m. on Saturday June 19, 1993 I was standing in the front of 391 Park Street, Hackensack. I had not seen this person before. As I resumed what I was doing, he punched me in the back of the head. When I turned around, he kicked me in the groin. He then pulled out a small bat... Parenthetically, petitioner was standing ten feet from where he had been attacked when installing a light bulb by a "visitor" to apartment 397-D Park Street. Break-ins were reported to the authorities at 390 and 397-D Park St.

When the attack by Osuji occurred, plaintiff was talking to a roomer (witness), by the name of Fayehun about his rent due. Plaintiff-appellant requested that Fayehun be present at the trial in Hackensack municipal court. Fayehun was treated by Urgent Care for injuries received on July 19, 1993. Fayehun was not available for testimony at the trial before judge Louis Dinice on July 28, 1993. Trial was scheduled before Judge Nasarenko in Saddle Brook on October 6 at 6 p.m. Plaintiff again requested that Fayehun be present to give testimony; Fayehun was missing during the week prior to the trial due to injuries received on September 21, 1993. Health Net Medical Group - Urgent Care reported that the following injuries were sustained on that day, "injured, 5th digit injured during physical altercation was hit on shoulder, 5th digit swollen, neck spasm.

__Judge Ackerman's opinion abounds in statements for which no application can be found under the fact within. For example as to tax relief he states that a "plain, speedy, and efficient remedy may be had in the court of such State",

28 USC Section 1341 (p. 14, Opinion, May 6. 1992). Under federal-state comity, he allows the state to proceed without review. Clearly, the tax court case filed in 1993 is duplicative of the tax court cases filed in 1979 discussed at p. 2 of the complaint - fourteen years is not speedy, and the tax relief is still not at hand.

Judge Ackerman at p. 19 of his May 6 opinion states that he has applied a functional approach based upon the third circuit's decision in Schrob v. Catterson, 948 F. 2d. 1402, 1404 (3rd Cir. 1991) - "under a functional approach, it is the nature of the official behavior challenged rather than the defendant's title or office that controls." In applying this standard to Amoroso and Farlie, he fails to recognize the customs of this small city. Judge Ackerman seeks proof that "official policy or custom" has damaged plaintiff (opinion, p. 22). He views the searches performed by the police or fire departments (involving fire/smoke alarms) as not official policy (there were 3000 of them in one year) (p. 23 of the opinion). Judge Ackerman claims at p. 24 that the police department did not have an official policy which caused direct harm. Ackerman claims that Amoroso is entitled to absolute immunity at p. 26 of the opinion, under the rule established in Kulwicki v. Dawson, 969 F 2d. 1454, 1463 (3rd Cir. 1992). Investigative or administrative acts would be entitled to only qualified immunity.

In the zoning dispute Judge Ackerman claims that petitioner has not established a property interest (p. 28), yet petitioner was/is an owner of real property adjacent to the variance site. Judge Ackerman states that petitioner "has alleged no facts supporting a due process violation."

As to Gutterman-Musicant (p. 31 of opinion), Judge Ackerman dismisses without consideration of the psychiatric halfway house issue, or the demolition of 387 Park street and 111 Passaic street, nor of the money damage consequent upon the subsequent purchase of 387 Park St.

The question raised by the foregoing statements is how the law is applied to the facts. Without ruling on specific discovery requests, the statements that no direct damage resulted are meaningless. In the Gentile variance, respondent zoning board found that there were 3 funerals the prior year [Resolution 7], yet the property was purchased for $875,000 on June 23, 1992 [Deed Book 7526, p. 570], twelve days after filing the variance application, and 21 days prior to the board of adjustment hearing.

Judge Ackerman suggests that the defendant police department is not culpable of civil rights or due process violations, but he cannot locate C. Morrissey in the pleadings. The replies contain thirty pages on Morrissey and the entry into apt. 397-B in 1992. (Pa 594-20). In response to the interrogatory on property damage, the police state both doors were damaged (Pa 596-25)." The tenant was forced to vacate her apartment, thereby causing rent loss.

Judge Ackerman was provided information on direct damage in the March 13, 1992 brief submitted by respondent showing rental income decreasing from $10,802 in April 1991 to $6,085 in April, 1992 (pages 13-20) - this was contained in the municipal "answer" to Dinice on August 25, 1992 as well.

As the complaint notes, numerous fire alarms sounding five hours per day are annoying. These alarms sounded, ten fire alarm alerts in one day, thirty-five in one week, about 200 in one year on the adjacent new building. The result - the mortgage was recast three times, the property [370 Park St.] was taken over by the builder. Petitioner also took special notice of the tenant in 397-D since she was the third tenant on welfare to be arrested on site, preceded by 391-G and 397-I; such acts were due to lack of training and illustrative of deliberate indifference to constitutional law and statutory protections. The case of City of Canton, Ohio v. Harris. 489 U.S. 378, 103 L. Ed.2d 412, 109 S.Ct.1197 (1989) concerns a detainee who brought a civil rights action against the city, alleging violation of her right to receive

necessary medical attention while in police custody. The tenant in 397-D was receiving SSI and welfare payments. Her release was contingent upon testifying against co-defendants. In Monell v. New York City Dept. of Social Services, 436 U. S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), the Supreme Court decided that a municipality can be found liable under Section 1983 only where the municipality **itself** caused the constitutional violation at issue. **Id.** at 694-695, 98 S.Ct. at 2037-38. "It is only where 'execution of the government's policy or custom...inflicts the injury that the municipality may be held liable under Section 1983." Springfield v. Kibbe, 480 U.S. 257, 267, 107 S.Ct. 1114, 1119, 94 L.Ed.2d 293 (1098) (p. 1204). Whether the city precipitated these arrests is a fact question, but the failure to provide even elemental services suggests that they did.) "In addition to the Sixth Circuit decisions discussed in n. 3, **supra**, most of the other Courts of Appeals have held that a failure to train can create liability under Section 1983 See, e.g. Spell v. McDaniel, 824 F. 2d. 1380, 1389-1391 (CA4 1098); Haynesworth v. Miller, 261 U.S. App. D.C. 66, 80-83, 820 F.2d 1245, 1259-1 262 (1987); Warren v. Lincoln, 816 F.2d 1254, 1262-1263 (CA8 1987); Berquist v. County of Cochise, 806 F. 2d 1364, 1369-1370 (CA9 1986); Wierstak v. Heffernan, 789 F. 2d 968, 974 (CA1 1986); Fiacco v. Rensselaer, 783 F.2d 319, 326-327 (CA 2 1986); Gilmere v. Atlanta, 774 F. 2d 1495, 1503-1504 (CA 11 1985) (en banc); Rock v. McCoy, 763 F.2d 394. 397-398 (CA 10 1985); Languirand v. Hayden, 717 F. 2d 220, 227-228 (CA5 1983)... See, e.g. Colburn v. Upper Darby Township, 838 F.2d 663, 672-673 (CA 3 1988); Lenard v. Argento, 699 F.2d 874, 885-887 (CA 7 1983)."

"In addition, six current Members of this Court have joined opinions in the past that have (at least implicitily) endorsed this theory of liability under Section 1983. See Oklahoma City v. Tuttle, supra, 471 U.S., at 829-831, 105 S.Ct.,at 2439-2440 ...; Springfield v. Kibbe, supra, 480 U.S., at 268-270, 107 S.Ct. at 1120-1121. (p. 1205) "Only

where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference" to the rights of its inhabitants can such a short-coming be properly thought of as a city "policy or custom" that is actionable under Section 1983."

Here the city appears to act in concert with the public defenders' office "deputy-judge" Koblitz who awarded $2,070 to social services when the tenant defaulted and the court failed to evict. Judge Polito required that the tenant and her sick child be housed pending the outcome of the fair hearing, occurring the very day of the trial (LT-301-93, February 4, 1993). N.J.DHS denied assistance, HPW 62-93, Agency No. S431877. Koblitz replaced Polito, and her decision was premised on a one-year limit to benefits, which was over-ruled in L.T. v. New Jersey Dept. of Human Services, A79-73,135 NJLJ 1577).

A case which discusses the reasons for the traditional application of absolute immunity, and the bases upon which said absolute immunity is removed is Apton v. Wilson, 506 F. 2d 83 (1974). The facts of that case concern actions by 34 individuals who were allegedly arrested during the "May-day Demonstrations of May, 1971, in Washington, D. C. The court held that a remand was necessary for determination of whether the qualified immunity shielded the "On reviewing the doctrine of official immunity, particularly in light of the recent Supreme Court decision in Scheur v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90(1974), we reverse the District Court's ruling as to the Justice Department defendants." at p.86. A judge will not be held liable unless he acts without color of authority. See Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 29 L.Ed. 646(1872). The common law immunity of judges is fully applicable in suits under 42 USC Section 1983 alleging deprivations of constitutional rights. Pierson v. Ray, 386 U.S. 547, 553-555, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).

At issue is that Dinice is clearly acting outside his

jurisdiction in arresting petitioner during oral argument on remand from the Appellate Division. Clearly, Dinice acts under color of authority, but outside his jurisdiciton when he hears landlord-tenant disputes - co-opting the role of the special civil part of the superior court in attempting to decide the Beavers case (complaint p. 19-22) which was before that court as an eviction due to non-payment of rent. Judge Dinice's actions were rash enough at the adjacent apartment house, 370 Park Street, so as to cause it to be sold after driving off the superintendant and conducting "hour-long" fire and police alerts. He even fined the management $575.00 for wear and tear on municipal services.

The Apton court states as follows [p.91] that "the soundness of any such extensions of an absolute immunity must be reappraised in the light of Scheuer v. Rhodes, supra."

"For prosecuting attorneys an immunity rule has been complicated by the diversity of their functions, with some, such as the presentation of evidence to a grand jury and the conduct of a trial, closely entwined with the judicial process. Amoroso does not indicate he presented his evidence to a grand jury. Amoroso did not even present the state's case from August 17, 1992 until December 3, 1992 (the fifth day of trial). Amoroso did was recommend seizure of rent checks, prior to trial. See., eg. Yaselli v. Goff, 12 F. 2d 396 (2d Cir. 1926), aff'd per curiam, 275 U.S. 503, 48 S.Ct. 155, 72 L. Ed. 395 (1927). However, the same protection has not been available when a claim under civil rights legislation focuses on a prosecutor's actions in the course of directing police investigative activity. See Robichaud v. Ronan, 351 F. 2d 533 (9th Cir. 1965); Lewis v. Brautigham, 227 F. 2d 124 (5th Cir.1955).

In the case sub judice, the respondents delayed for years. The issuance of warrants sua sponte, water shutoff, breaking down doors, fires at 111 Passaic Street, 390 Park Street, and 387 Park St. followed years of complaints

Can a good gaith belief as to the constitutionality of the city's actions be made under the cirucmstnaces addressed within **Moretti v. Zisa**? Petitioner states, "No." The Scheuer opinion couples good faith belief with 'reasonable grounds' for the belief. In the case at bar, the respondents had prior notice for two years prior to the complained of "precipitous" events. Although the official is protected if he entertains a reasonable belief that his actions are lawful, [See Pierson v. Ray, 386 U.S. 547, 555-557, 87 S. Ct. 1213, 18 L.Ed. 2d 288 (1967)], the Supreme Court in Scheuer concluded that, "reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good faith belief,[alone] affords basis for qualified immunity. 416 U.S. at 247-248, 94 S Ct. at 1692.

The preservation of individual rights require clear and unquestionable authority of law, Terry v. Ohio, 392 U. S. 1, 9, 88 S. Ct. 1868, 1873, 20 L. Ed. 2d 889 (1968), Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 11 S. Ct. 1000, 35 L. Ed. 734 (1891), A remedy in damages is inferred. Bivens v. Six Unknown Named Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed. 2d 619 (1971).

In the instant case, Dinice (and Koblitz) are acting like both a prosecutor (who is a business-person) and an advocate-lawyer - which role is occupied at any time is difficult to discern. Dinice processes extermination complaints as tenant advocate, but then when tenants are evicted for non-payment offers no assistance. Raiding apartments, breaking down doors at 370 Park Street followed after the on-site personnel were driven off the premises - this is not the "traditional" role of a judge.

Upon receipt of the replies detailing the above facts, trial court Judge Harold Ackerman secretly converting a Fed. R. Civ. P. 12(b)(6) hearing into a Fed. R. Civ. P. 56 motion for summary judgment. Judge Ackerman's opinion, which is affirmed by the Court of Appeals without comment, does not reach the facts of the complaint.

The Supreme Court recently noted, the 'cases do not extend absolute immunity to all officers who engage in necessary official acts.' Hafer v. Melo, - U.S. -, 112S. Ct. 358, 363, 116 L.Ed. 2d 301 (1991). Merely investigative evidence-gathering is not absolutely protected, however, and in that instance an officer must meet the 'objective reasonableness' standard of qualified immunity to be relieved of suit. See Burns, 111 S.Ct. at 1943; Rose, 871 F. 2d at 343. The issue herein is that Dinice has acted outside his jurisdiction, supplanting the division which both protects the system and allows judges to act with absolute immunity. Is this position taken in good faith, or is it typical of most such positions in derogation of the law, filled with the infirmities which it properly deserves.

"The line between quasi-judicial and investigative activity is far from clear. Some courts look to the occurrence of the activity relative to the filing of the complaint. See Schrob, 948 F. 2d at 1415 (collecting cases). Evidence gleaned prior to the filing is deemed invesigative. Certain pre-filing interactions with the police are 'investigative,' such as directing evidence-gathering, See Joseph, 795 F.2d at 556 (citing Imbler), or giving probable cause advise, Burns, 111 S.Ct. at 1944-45. See also Rose, 871 F.2d at 344. Evidence obtained at or after the filing is likely to be connected with an existing prosecution, and is absolutely protected. E.g. Hunt v. Jaglowski, 926 F.2d 689, 693 (7th Cir. 1991). For an approach to the dividing line between absolute and qualified immunity based on the impact of the court rather than the actions of the prosecutor, see Millspaugh v. County Dept. of Public Welfare, 937 F. 2d 1172, 1175-77 (7th Cir. 1991) "Communication with the press is not core prosecutorial activity. As this court has noted on two occasions, '[t]alking to the press is, at best, only an administrative function," Schrob, 948 F.2d at 1420; Helstoski v. Goldstein, 552 F.2d 564, 566 (3d Cir. 1977).

CONCLUSION

Petitioner hereby seeks a prohibition of the harassing tactics of the respondents, and their several law firms, so as to be free of the repetitive arrest warrants they seek to hand out. While Judge Ackerman alleged there were no fact disputes in the complaint, 370 Park Street, a new seventy-two unit apartment house run by a doctor, was lost due to poor municipal services. The problems continued there even under ownership of an owner-lawyer in an adjacent building. Hollis was a Hackensack political candidate for the city council, and now he has been suspended from the practice of law. Why did not discovery dispel the possiblity that these facts were significant? Judge Ackerman's opinions are silent as to this. Why have the respondents evaded discovery, opposing petitioner's rights even in the highest courts of the land?

Petitioner preys for relief from city lawyers who threatens arrest for evading collection of sanctions imposed by a court which conducted no hearings, allowed no discovery, and failed to even consider the pleadings filed in it. Unable to operate in a business-like way, the respondents seek all the profits of business, with none of the responsibilities. Victimizing poor working tenants (and property operators) must cease. Driving working people to the poor house is deliberate indifference under 42 USC Section 1983, and its illegality must be made manifest. Petitioner seeks such relief as the Supreme Court may provide to prevent this injustive.

DATE: APRIL 22, 1994

RESPECTFULLY SUBMITTED,

SALVATORE MORETTI
Petitioner, Pro Se

SERVICE LIST

Scott J. Topolski, Esq.
Romano & Feczko, Esqs.
15 Essex Road
Paramus, New Jersey 07652
(201) 845-6624
On Behalf of:
Mayor John Zisa, and the Hackensack City Council
Patricia Farlie and the Hackensack Health Department
Richard Carucci and the Hackensack Fire Department
C. Morrissey and the Hackensack Police Department
Henry Amoroso - Hackensack Prosecutor G. Thomas Gentile

Jospeh Mecca, Jr. Esq.
South 87 Farview Avenue
P. O. Box 384
Paramus, New Jersey 07652
(201) 843-1400
On Behalf of:
George Diana and the Hackensack Board of Adjustment

John P. Wallace, Esq.
216 East Ridgewood Avenue
Ridgewood, New Jersey 07450
(201) 445-3533
On Behalf of: Hackensack Water Company

Steven M. Greenberg, Esq.
2 University Plaza
Hackensack, New Jersey 07601
(201) 487-7755
On Behalf of: Gutterman-Musicant, Inc., aka
Gutterman-Musicant Funeral Directors, Inc.

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NO._____

United States Court of
Appeals for the Third Circuit
NO. 93-5416

Salvatore Moretti,
Appellant

v.

Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile
Appeal from the United States District Court of New Jersey (D.C. Civ. No. 92-04206). District Judge Honorable Harold A. Ackerman Submitted under Third Circuit LAR 34.1(a), February 1, 1994. Before: Mansmann, Greenberg and Nygaard, Circuit Judges
Judgment Order

After consideration of all contentions raised by the appellant, it is Adjuged and Ordered that the judgment of the district court be and is hereby affirmed. Costs taxed against the appellant. By The Court. Circuit Judge: Carol Los Mansmann Attest: P. Douglas Sisk, Clerk: Feb. 10, 1994

U. S. Supreme Court Oct. Term 1993, Moretti v. Zisa, et al. Petitioner's Appendix. March 17 1994 en banc hearing denied.

No. _____

United States Court of Appeals

For The Third Circuit

Salvatore Moretti,

Appellant

vs.

Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile

Sur Petition for Rehearing

Present: Sloviter, Chief Judge. Becker, Stapleton, Mansmann, Greenberg, Hutchinson, Scirica, Cowen, Nygaard, Alito, Roth and Lewis, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court: Carol Los Mansmann, Circuit Judge - March 17, 1994

U. S. Supreme Court Oct. Term 1993, Moretti v. Zisa, et al. Petitioner's Appendix. March 20, 1994 Mandate for costs. hearing denied.

No. _____

United States District Court
District of New Jersey
Office of the Clerk
U. S. P. O. & Courthouse
Newark, New Jersey 07101

Wm. T.Walsh, Clerk
Reply to Newark
Court of Appeals Docket #93-5416
Scott John Topolski, Esq. Romano & Fecko, 15 Essex Road, Paramus, N.J. 07652
Joseph Mecca, Jr. Esq., South 87 Farview Ave, P. O. Box 394, Paramus, NJ 07652
John P. Wallace, Esq., 216 E. Ridgewood Ave., Ridgewood, NJ 07450 Re: Moretti v. Mayor John Zisa, 92-cv-4206(HAA) Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on 3/28/94. It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court. The mandate ordered that the order of the District court is affirmed w/costs taxed agaisnt appellant in the sum of $242.30.
Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,
William T. Walsh, Clerk, by Deputy Clerk

U. S. Supreme Court Oct. Term 1993, Moretti v. Zisa, et al. Petitioner's Appendix. May 6, 1994 Order by Harold A Ackerman. for Dismissal /Amend.

No. _____

United States District Court

District of New Jersey

Salvatore Moretti,

Plaintiff

vs.

Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile,

Defendants

Civil Action No. 92-04206 (Harold A. Ackerman) -

Order -

This matter having come before the court on the motions of the defendants to dismiss the complaint under Fed. R. Civ. P. 12 (b) for failure to state a claim and for lack of subject matter jurisdiction, and for sanctions pursuant to Fed. R. Civ. P. 11; and this court having fully considered the submitted briefs and the record before it; and for the reasons expressed in my opinion issued this same day; and for good cause shown;

It is on this 6th day of May, 1993;

Ordered that defendant' motions to dismiss the complaint are granted; and it is further

Ordered that the dismissal will be stayed for fifteen days so that plaintiff may amend his complaint if he so chooses; and it is further

Ordered that defendant' motions for sanction are denied without prejudice.

- Harold A. Ackerman, J.S.D.J.

Salvatore Moretti,
Plaintiff

vs.

Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile,
Defendants

Civil Action No. 92-04206 (Harold A. Ackerman) -
Order Filed June 21, 1993,
Wm. T. Walsh, Clerk

Ackerman, District Judge:

By order dated May 8, 1993, this court dismissed the complaint of pro se plaintiff Salvatore Moretti ("Moretti") for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). This court stayed the dismissal for fifteen days in order to give Moretti an opportunity to amend his complaint if he so desired.

Rather than amending his complaint, Moretti submitted a 69-page "Brief In Reply to Granting of Defendants' Motion for Dismissal under Rule 12(b)(6) and Rule 11," dated May 18, 1993.

This court will treat Moretti's brief as a motion for reconsideration pursuant to Rule 12I of the General Rules for the District of New

Jersey. See Haddad Mfg. Co. v. Gucci, Inc. 651 F. Supp. 1277, 1282 n.3 (D.N.J. 1987) (treating litigant's letter as motion for reconsideration); see also Union Switch & Signal Division American Standard Inc. v. United Electrical, Radio and Machine Workers of America, Local 610, 900 F. 2d 608, 614 (3rd Cir 1990))(in determining how to characterize motion, court is not constrained by how it is titled, but rather, court must look to purpose motion attempt to achieve).

Under Rule 12I, a motion for reconsideration must set forth "the matters or controlling decisions" which the litigant beliefes the court has overlooked. See Rule 12I. Thus, a motion for reconsideration will be succesful only where dispositive factual matters or controlling decisins of law were presednted to the court but not considered. See Pelham v. United States, 661 F. Supp. 1063, 1065 (D.N.J. 1987); see also G-69 v. Degnan, 748 F. Supp. 274, 275 (D.N.J. 1990)(only proper ground for granting motion for reconsidertion is that matters or decisions overlooked by court might reasonably have altered result). Where the motion merely raises a party's disagreement with the court's initial decision, that "should be dealt with in the normal appellate process, not on a motion for reargument under Local Rule 12(I)."
Florham Park Chevron, Inc. v. Chevron U.S.A., Inc., 680 F. Supp 159, 162 (D.N.J. 1988); Degnan), 748 F. Supp. at 275 ("A party seeking reconsideration must show more than a disagreement with the Court's decision."). Nor can a motion for reconsideration raise arguments that were not raised before the court in the initial motion. See Florham, 680 F. Supp. at 162 ("Rule 12I does not contemplate a Court looking to matters which were not originally present

but which have since been provided for consideration").

Here, Moretti has not pointed to any controlling authorities or dispositive factual matters which were presented to the Court at the time the original motions were decided and which he believes the Court overlooked. Rather. Moretti is essentially disagreeing with the court's analysis and conclusions and, in some instances, raising arguments for the first time. These, however, are not proper subjects of a motion for reconsideration.

. Although given the opportunity to correct the deficiencies in his complaint, Moretti failed to comply with the directions set forth in this court's Opinion and Order and amend his complaint within the fifteen-day period prescribed by the court.[1] [1. Although Moretti complains about "[t]he difficulty of amending a 45 page complaint in fifteen days." Brief at 7, Moretti never sought an extension of time from this court before submitting his brief and, in any event, managed to submit a 69-page brief to the court within the prescribed time period.] In addition. Moretti maintains throughout his brief that his complaint is pled with sufficient specificity.

In light of all these considerations, Moretti's-complaint will be dismissed. Although Moreiti is representing himself pro se, a litigant's pro se status does not excuse deliverate flouting of a court's clear mandates and rules of procedure. See Martinez -McBean v. Government of the Virgin Islands, 562 F.2d 908,912(3rd Cir.1977).[2][I note in this regard that Moretti claims in his brief to have a law degree].

It is therefore on this 21st day of June, 1993; Ordered that plaintiff's complaint is dismissed with prejudice.

Harold A. Ackerman, U.S.D.J

U. S. Supreme Court Oct. Term 1993, Moretti v. Zisa, et al. Petitioner's Appendix. Scheduling Order By Magistrate Judge Stanley Chesler, Entered January 21, 1993. U. S. District Court, Newark. Wm. T. Walsh, Clerk

United States District Court
District of New Jersey

Romano & Fecko, 15 Essex Rd., Paramus, NJ 07652 (201) 845-6621. Attorneys for Defendants: Mayor John Zisa; The Hackensack City Council; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso - Hackensack Prosecutor

---

Salvatore Moretti,
Plaintiff

vs.

Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile,
Defendants

Civil Action No. 92-04206 (Harold A. Ackerman) - Order Filed Jan 21, 1993

The Court having held a scheduling conference on January 5, 1993, at which the plaintiff, Salvatore Moretti, apeared Pro Se, and in the presence of counsel for all defendants, and all counsel having

represented that certain dispositive motions are to be filed and served on behalf of all defendants, and for good cause shown; It Is on this 21st day of January, 1993: Ordered as follows:

1. All defense motions to dismiss plaintiff's Complaint shall be filed and served on or before February 5, 1993.
2. All discovery shall be stayed pending the disposition of said motions.
3. A scheduling conference will be held on April 29, 1993, at 10:30 a.m. before Magistrate judge Stanley R. Chesler.
4. Scott J. Topolski, Esq. of the law firm of Romano & Feczko, P.C. attorneys for defendants Mayor John Zisa; The Hackensack City Council; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor shall monitor the progress of defense motions to dismiss. If any or all of said motions have not been decided by April 29, 1993, the said Scott J. Topolski, Esq. shall contact the Court to request an adjournment of the April 29, 1993, scheduling conference.
5. A copy of this Order shall be served upon all parties within 7 days hereof.

_____

Stanley R. Chesler
U. S. Magistrate Judge

United States District Court
District of New Jersey

Salvatore Moretti,
Plaintiff
vs.
Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile,
Defendants

Civil Action No. 92-04206 (Harold A. Ackerman) - Opinion

Salvatore Moretti, 390 Park Street, Hackensack, NJ 07601;
Steven M. Greenberg, 2 University Plaza, Hackensack NJ 07601
John P. Wallace, 216 E. Ridgewood Avenue, Ridgewood, NJ 07450
Joseph L. Mecca, Jr. South 87 Fairview (sic) Avenue, P. O. Box 384, Paramus, NJ 07652
Zisa & Hitcherich, 77 Hudson Street, Hackensack, NJ 07601 attn.: John Zisa
Romano & Feczko, P.C. 15 Essex Road, Paramus, NJ 07601, attn: Scott J. Topolski
ACKERMAN, District Judge:

Pro se plaintiff Salvatore Moretti ("Moretti") commenced this action seeking damages from numerous local government entities and individuals for alleged violations of his civil rights. This matter comes

before the court on the motions of the defendants to dism iss the complaint uder Fed. R. Civ. P. 12(b) for failure to state a claim and for lack of subject matter jurisdiction, and for sanctions pursuant to Fed. R. Civ. P. 11. For the following reasons, defendants' motions to dismiss the complaint are granted but their motions for sanctions are denied.

I. Factual Background

Moretti is the record property owner of a 20-unit apartment complex located in Hackensack, New Jersey.

In his 48-page complaint,Moretti attempts to set forth numerous unrelated claims, invoking this court' s jurisdiction pursuant to 42 U.S.C. Sections 1981, 1982 and 1983. Although his complaint is extremely convoluted and therefore difficult to understand, Moretti appears to make the following claims.

In Count I, Moretti seeks damages against the Hackensack Health Department ("Health Department"), the Hackensack Police Department ("Police Department"), the Hackensack Fire Department ("Fire Department") and the Hackensack City Council ("City Council"). He alleges that the Health Department, with the assistance of the Police Department and/or the Fire Department, caused at least six steel doors to be broken into in his apartment building. He further alleges that the Police Department ripped down a bannister and has sought Moretti's assistance to enter into certain apartments without a warrant. He alleges that the Fire Department has conducted over 200 smoke alarm and fire alarm "alerts" in the immediate vicinity of the aparttment building. He also alleges that an unidentified fireman assaulted him in the cellar when he inquired as to the

frequency of the alerts.

Count Two alleges a claim against the City Council. He alleges that he appeared before the Council to complaint about the events set forth in Count I of the complaint, "without avail." Compl. Paragraph 8. He also complains that frequent plumbing "back-ups" attributable to "excessive debris collecting in the combined storn sewers and building septic system," in combination with a moratorium on building permits with sewer hook-ups, has reduced the value of his property. Id. Moretti alleges that the defendants have thus conspired to take Moretti's property without just compensation. Specifically, Moretti alles that the defendants have conspired to fix the assessed value of his property far in excess of its actual value. Moretti claims that this also constitutes a violation of his civil rights "since the subject porperty requires excessive numbers of hours to operate." Paragraph 10. Finally, Moretti alleges collusion on the part of the Council allowing defendant Gutterman-Musicant, Inc. ("Gutterman") to park on his property.

Count III alleges a claim against defendants Gutterman, G. Thomas Gentile ("Gentile"), the Hackensack Board of Adjustment ("Board of Adjustment") and the City Counsel. He alleges that defendant Gentile sought a zoning variance and that Moretti , as an owner of property in the immediate vicinity, received notice of the public hearing to be held in connection with the variance application. The notice provided that Moretti could appear and present any objections to the variance. A hearing was held on July 15, 1992 at which Genttile allegedly appeared without any expert testimony. According to the complaint, Moretti "addressed the Board of

Adjustment advising it of the negative criteria which had to be overcome for re-zoning from R-3B medium denity (sic) multi-family and business office to parking lot for a funeral parlor. Plaintiff advised the Board as to the cost of residential properties on Park Street." Paragraph 13. Moretti alleges that Gentile's application for a variance was granted and that the Board failed to discuss the negative criteria for granting of a variance. Moretti also alleges that "he was not allowed to set forth an opposing viewpoint at the hearing." Paragraph 15. Pliantiff claims that the grant of Gentile's variance is "nothing more than the grant of a local monopoly to Gentile," Paragraph 18, and that the acts described in Count 111 constitute "preferential treatment."

Count IV sets forth a claim against defendants Hackensack Water Company ("Water Company"), the Health Department, Patricia Farlie ("Farlie"), the Police Department and the City Council. It alleges that the "Water Company, with the knowledge and permission of the Hackensack municipal government, turned off the water supply in Moretti's apartment building on two occasions and that the water bills were inflated. Moretti also alleges that the Health Department and Farlie signed a complaint against him in municipal court alleging that he had failed to supply water to his tenants. Two warrants were issued for his arrest. Plaintiff alleges that while he was appearing in court in connection with his dispute with the Water Company, he was arrested, taken to Hackensack Municipal Court and then placed in Bergen County Jail for failure to provide an adequate supply of water to his tenants. Moretti further alleges that a Municipal Court judge informed

Moretti that if he failed to settle his account with the Water Company, then he would be fined $500 a day. Moretti alleges that "[t]his act on behalf of the City Council produced great emotional upheaval..." Paragraph 25. Moretti contends that his bail was used to pay off the water bill and that since the City of Hackensack used the Water Company to do its water searches, this constituted a conflict of interest. Moretti alleges that the "acts of the city judge were malicious and were meant to produce loss of business and great humiliation, and were supported by the City Council of Hackensack." Paragraph 26. Moretti further alleges that the Police Departments was involved with the arrest and that the arrest was illegal. According to Moretti, the warrants were not valid since there was no probable cause for their issuance.

Count V alleges that all the acts taken by defendants Police Department, Fire Department and City Council have interfered with Moretti's civil rights, as a result of which he has sustained monerary injury. Moretti alleges that defendants' conduct consitutes "malicious abuse of legal process" and "interference with business relationships."

In Count VI, Moretti alleges that search warrants were issued and executed illegally and that he had been subject to "investigatorial state harassment." Paragraph 36. He also alleges that Henry J. Amoroso, Prosecutor of Hackensack, is "prosecuting a water shut off case in which the municipal court is supplanting ownership of the property." He alleges threats were made to confiscate rent checks, have rent paid into court and force foreclosure. He further alleges that this conduct was malicious in nature. Further, city inspectors were present and

did nothing when the Water Company turned off the water. Moretti also alleges that discrimination results where one group is given variances and another group fails to receive variances.

II. Discussion

A. Dismisssal under Rule 12(b)

Defendants have moved to dismiss the various claims set forth in the complaint for lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6).

Dismissal for lack of subject matter jurisdiction and for failure to state a claim "are analytically distinct, each bearing different burdens and each implicating different legal principles." Johnsrud v. Carter, 620 F. 2d 29, 32 (3rd Cir. 1980). On a motion to dismiss for lack of jurisdiction, the burden of demonstrating federal jurisdiction is on the plaintiff. Id. On a motion to dismiss for failure to state a claim, the burden is on the movant. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F. wd 1406, 1409 (3rd Cir. 1991).

1. Rule 12(b)(1)

In Moretti's "jurisdictional Statement," he invokes this court's jurisdiction pursuant to 42 W.S.C. Sections 1981, 1982 and 1983. Although these statutes create federal causes of action, they do not by themselves confer subject matter jurisdiction. Hagans v. LaVine, 415 U.S. 528, 535 (1973). The court will interpret Moretti's complaint as implicitly asserting jurisdiction pursuant to 28 U. S. C. Section 1331 (federal question jurisdiction) and 28 U.S.C. 1343(a)(3) (original jurisdiction in district courts for actions alleging deprivations of federal rights under color of state law). See Davis v. Ohio

Barge Line, Inc., 697 F.2d 549, 552 (3d Cir 1983)(court may independently ascertain whether there diction). "Under either section, a court has jurisdiction over the dispute so long as the plaintiff alleges that defendant's actions violate the requisite federal law: under Section 1331, any federal law; under Section 1343, only laws that relate to civil rights." Id.; see also Growth Horizons, Inc. v. Delaware County, PA. 983 F.2d 1277, 1281 (3d Cir. 1993)("A district court has federal question jurisdiction in any case where a plaintiff with standing makes a non-frivolous allegation that he or she is entitled to relief because the defendant's conduct violated a federal statute.").

In very limited circumstances, the court may dismiss a complaint for lack of jurisdiction based on legal insufficiency of the claim. Such "dismissal is proper only when the claim 'clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or...is wholly insubstantial and frivolous.'" Kehr Packages, 926 F.2d at 1408-09 (quoting Bell v. Hood, 327 U.S. 678, 682 (1946)). Dismissal for lack of subject matter jurisdiction "is not appropriate merely because the legal theory alleges [s.b.-d-] is probably false, but only because the right claimed is 'so insubstantial, implausible, foreclosed by prior decision of this Court, or otherwise completely devoid of merit as not to inv lve a federal controversy.'" Kulick v. Pocono Downs Racing Ass'n, 816 F.2d 895, 899 (3d Cir. 1987) (quoting Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974)). In other words, the claims must be "insubstantial on their face" in order to warrant dismissal. Hagans, 415 U.S. at 542 n. 10 (citation omitted). As a general matter, challenges

on the basis that the claim fails to state a cause of actions should be brought under Rule 12(b)(6), Kehr, 926 F.2d at 1409, and the Third Circuit has expressed a preference for deciding challenges to the legal sufficiency of a complaint pursuant to Rule 12(b)(6), rather than Rule 12(b)(1). See, e.g., Id.; Kulick, 816 F.2d at 897-99.

Here, the Ciomplaint alleges that the conduct of vqarious local government entities and officials violate Mr. Moretti's constitutional rights and explicitly invokes 42 R.S.C. Sections 1981, 1982, and 1983. As the Third Circuit has stated, once the plaintiff meets this threshold pleading requirement, that is, that defendant's conduct violates a federal law, the legal question whether the facts alleged establish such a violation is a question on the merits to be disposed of pursuant to Rule 12(b)(6). See Kulick, 816 F.2d 895. Moreover, it cannot be said that the allegations of the complaint are so frivolous as a matter of law so as to eliminate subject matter jurisdiciton over the complaint. I therefore decline to dismiss the complaint pursuant to Rule 12(b)(1). I now turn to defendants' contention that the complaint fails to state a claim under Rule 12(b)(6).

2. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) permits the dismissal of a complaint, or a count therein, for the failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). The claim need not be wholly insubstantial to be dismissed under Rule 12(b)(6). Kehr, 926 F.2d at 1409. "The threshold to withstand a motion to dismiss under Fed. R. Civ. P. 12(b)(1) is thus lower than

than required to withstand a Rule 12(b)(6) motion." Lunderstadt v. Colafella, 885 F.2d 66, 70(2d Cir. 1989).

When reviewing the efficiacy of a complaint under Rule 12(b)(6), I "must accept as true all well-pleaded allegations of the complaint, and construe them in a light most favorable to the plaintiff;...dismissal may [result] only if the plaintiff alleges no set of facts which, if proved, would entitle him...to relief." See Marshall-Silver Constr. Co. v. Mendel, 894 F. 2d 593, 595 (3d Cir. 1990); accord Conley v. Gibson, 355 U.S. 41, 45-45 9sic)(1957); Rogin v. Bensalem Township, 616 F.2d 680, 685 (3d Cir. 1980) cert. denied sub nom. Mark Garner Assoc., Inc. v. Bensalem Township, 450 U.S. 1029 (1981). In addition, because Moretti is a pro se litigant who is basically unfamiliar with legal terms and procedure, I will subject his complaint to a liberal reading. See Haines v. Kerner, 404 U.S. 519 (1972); Hurd v. Romeo, 752 F.2d 68, 70 (3d Cir. 1985).

In this case, Moretti sets forth his claims under 42 U.S.C. Section 1983 (1988).1[Moretti also invokes 48 (s.b. 42) U.S.C. Sections 1981 and 1982. However, an element of a cause of action under both Sections 1981 and 1982 is discrimination on the basis of race. See Saint Francis College v. Al-Khazraji, 481 U.S. 604, 609 (1986)(Section 1981); Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 616 (1986) (Section 1982). As Moretti has made no allegation that any of the acts taken by the defendants were done on account of race, all his claims based on Sections 1981 and 1982 will be dismissed.] Section 1983 provides in pertinent part:

Every person who, under color of any statute,

> ordinance, regulation, custom, or usage, of any State or Territory..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress...

To successfully asset a claim under this provision, a plaintiff must allege 1) a violation of a right or privilege secured by the constitution or laws of the United States and 2) that the alleged violation was committed by a person acting under color of state law, or more simply, by a state actor. See West v. Atkins, 487 U.S. 42, 48 (1988); Colburn v. Upper Darby Township, 838 F.2d 663, 667 (3d Cir. 1988). Moreover, the complaint must contain "a modicum of factual specificity, identifying the particular conduct of defendants that is alleged to have harmed the plaintiffs." Colburn, 838 F.2d at 666 (quoting Ross v. Meagan, 638 F.2d 646, 659 (3d Cir 1981)); accord Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir. 1985); Hall v. Pennsylvania State Police, 570 F.2d 86, 89 (3d Cir. 1978). "The heightened specificity requirement for section 1983 does not alter the general standard for ruling on motions to dismiss under Rule 12(b)(6)." Colburn, 838 F.2d at 666. "[T]he crucial questions are whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer." Id. (quoting Frazier v. Southeastern Pennsylvania Transportation Authority, 785 F. 2d. 65, 68 (3d Cir. 1986). "[C]omplaints

comply with this standard if they allege the specifici conduct violating the plaintiff's rights, the time and the place of that conduct, and the identitiy of the responsible officials." Id.

Bearing these principles in mind, I will now turn to the claims alleged against each defendant.

a. G. Thomas Gentile

Moretti's claim against Gentile is simply that Gentile applied for and obtained a zoning variance over Moretti's objections.

Gentile argues that any claim of constitutional violation arising from the granting of the variance can ie only against the Board of Adjustment, which granted the variance, and not the landowner who sought the variance. Thus he contends that his inclusion in this lawsuit is frivolous.

I agree. First, there is no allegation that Gentile is a person acting under color of state law. Rather, it is clear from the allegations of the complaint that Gentile is a private citizen/ landowner. Second, there is no allegation that Gentile vioated a right or privilege secured by the constitution or laws of the United States. Rather, Gentile simply applied for and received a zoning variance. Although Moretti obviosly disagrees with the Board of Adjustment's decision to grant the variance application, Moretti has not alleged any unconstitutional conduct by Gentile. Even assuming that constitutional violations occurred at the hearing before the Board of Adjustment, any such alleged violation was committed by the Board, not Gentile. Put simply, Gentile has done nothing to Moretti that even remotely approaches a cognizable constitutional violation. I therefore find that Moretti's claim of constitutional rights violations

against Gentile fails to state a claim for relief and must be dismissed.

b. Mayor John Zisa

Defendant Mayor John Zisa ("Zisa") is listed in the caption of the complaint and that is all. He is nolt alleged to have had any connection with any of theactions or alleged constitutional violations described in the complaint. Any claim as to him will, therefore, be dismissed. See Colburn, 838 F.wd at 673 (claims against individual defendants in their individual capacitites dismissed where no allegations concerning their involvment in allegedly wrongful conduct); Dawes v. Philadelphia Gas Commission, 421 F. Supp. 806, 821 (E.D.Pa. 1976)(claim dismissed where individual defendants named in caption only and no allegation of person participation or involvement in alleged constitutional violations).

c. Hackensack City Council

Moretti attempts to allege several claims against the City Council, all of which warrant dismissal. For example, Moretti alleged that he presented various complaints before the Council "without avail." The mere fact that he was not afforded the relief he sought from the Council, however, simply does not rise to the level of a constitutional violation. Therefore, this claim will be dismissed.

Moretti also alleges that the Council conspired to fix the assessed value of his property in excess of its actual value, thereby depriving him of his ownership rights. This court is barred from hearing this claim, however, for lack of subject matter jurisdiciton. 2 [Although the factual allegations set forth in this count refer to unidentified "defendants," the demand for relief contained in this

count names only the City Council. In either case, however, the claim must be dismissed because this court lacks subject matter jurisdiction.]

The Tax Injunction Act ("Act") provides that:

[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax where a plain, speedy and efficient remedy may be had in the court of such State.

28 U.S.C. Section 1341. The principal purpose of the Act is to limit federal court interference with local tax matters. Hardwick v. Cuomo, 891 F.wd 1097, 1104 (3d Cir. 1989)(citing California v. Grace Brethren Church, 457 U.S. 393, 411 (1982)). The United States Supreme Couet has interpreted this statute as prohibiting federal courts from granting injunctive relief, see Rosewell v. LaSalle National Bank, 450 U.S. 503, 522 (1981), as well as declaratory relief, see California v. Grace Brethren Church, 457 U.S. 393, 408-11 (1982), as long as there is a "plain, speedy and efficient remedy" available in state court. Both the Supreme Court and the Third Circuit have declined to rule on whether the Tax Injunction Act bars actions for monetary damages. See Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981); Sipe v. Amerada Hess Corp., 689 F. 2d 396, 403 (1982). However, in Fair Assessment, the Supreme Court held that the principle of comity prevents a federal court from granting damages in a Section 1983 case if a "plain, adequate and complete remedy" may be had in state court. Id. at 116; see also Hardwick v. Cuomo, 891 F2d. 1097, 1104 (3d Cir. 1989)(comity supplements Tax Injunction Act when only money damages are sought).

In Fair Assessment, the court held that there is

"no significant difference" between the "plain, speedy and efficient" standard under the Tax Injunction Act and the "plain, adequate, and complete" standard governing comity. 454 U.S. at 116 n. 8. The "plain, speedy and efficient" remedy requirement is to be construed narrownly. Sipe, 689 F.2d at 404 (quoting Grace Brethren, 457 U.S. at 413). A state remedy is deemed adequate if it satisfied certain prodecural criteria. Behe v. Chester County Bd. of Assessment Appeals, 952 F.2d. 66, 68 (3d Cir. 1981)(citing Rosewell, 450 U.S. at 512). Specifically, the state remedy is sufficient if it "'provides the taxpayer with a 'full hearing and judicial determination' at which [the taxpayer] may raisy any and all constitutional objections.;: Hardwick, 891 F.wd at 1105 (quoting Grace Brethren, 457 U.S. at 412).

New Jersey provides several remedies which afford the plaintiff an opportunity to raise all constituional objections to the allegedly wrongful property assessment. For example, N.J.S.A. 54:3-21 provides that a taxpayer aggreived by the assessed valuation of property may appeal to the county board of taxation.3 [3. N.J.S.A.54:3-21 also provides that if the assessed value of property exceeds $750,000, the taxpayer may file a complaint directly with the tax court.] If a party is dissatisfied with the county board's determination, he or she may seek judicial review of the determination by filing a complaint in the tax court. N.J.S.A. 54:51A-1. Thus, New Jersey law provides for an administrative determination, as well as judicial review of that determination.

A taxpayer, moreover, is not limited to this review procedure. New Jersey also has a statute

providing for declaratory judment actions. See N.J.S.A. 2A:16-53. See Sipe, 689 F.2d at 405. Finally, a plaintiff may bring a Section 1983 action in state court. See Peper v. Princeton University Board of Trustees, 77 N.J. 55, 74 (1978)(New Jersey courts have the jurisdiction to interpret federal statutes and decide federal claims); see, e.g., Timber Properties, Inc. v. Chester Township, 205 N.J. Super. 273(Law Div. 1985)(Section 1983 action). New Jersey therefore, provides sufficient remedies affording plaintiff the opportunity to raise any constitutional objections to the real property tax assessment. See Fair Assessment, 454 U.S. at 116-17 (availability of state court Section 1983 action supports withholding of federal jurisdiction); Long Island Lighting Co. v. Town of Brookhaven, 889 F.2d 428, 432 (2d Cir. 1989) (same); Sipe, 689 F.2d at 405-08 (adequate remedy where state court has jurisdiction to decide federal claims). Because New Jersey provides a plain, complete and adequate remedy, this court lacks jurisdiction over any claim regarding the allegedly wrongul property value assessment.

Moretti also alleges that the City Council allowed parking to occur on his property by defendant Gutterman. this claim, however, is not pled with sufficient specificity and will therefore be dismissed.

Moretti also attempts to state a claim against the Council arising from the grant of the zoning variance to defendant Gentile by the Board of Adjustmewnt. However, none of the factual allegations set forth in this count refer to the Council. the Council is simply listed in the demand for relief. Moreover, Moretti has allged no basis on

which the Council could be held liable for any allegedly unconstitutintional acts taken by the Board of Adjustment in connection with the granting of a zoning variance. therefore, this claim as against the Countil fails to state a claim and will be dismissed.

d. Patricia Farlie

Moretti's claim against defendant Farlie arises from the fact that she signed a complaint against Moretti for failure to supply water to his tenants.

Farlie argues that she is not liable to plaintiff for administrative actions of a legislative or judicial nature. She argues that the filing of a complaint is an administrative act of a legislative or judicial nature and therefore immune under N.J.S.A. 59:203 and 59:3-2. 4[N.J.S.A. 59:2-3 provides, in relevant part: "A public entity is not liable for legislativwe or judicial action or inaction, or administrative action or inaction or a legislative or judicial nature..."
N.J.S.A. 59:3-2 provides, in relevant part: "A public employee is not liable for legislative or judicial action or inaction, or administrative asction or inaction of a legislative or judicial nature..."]

However, immunities available under the New Jersey Tort Claims Act cannot insulate defendant from liability from violation of a federal right. See Mancini v. Lester, 630 F.2d 990, 994-95 (3d Cir. 1980); see also Agreste v. Goode, 797 F. Supp. 399, 405 (E.D.)a. 1992)(existence of a state law privilege is not conclusive in a Section 1983 action). "[A] section 1983 action arises under federal law, and in such an action there is a federal interest in defining the scope of applicable privileges." Agreste, 797 F. Supp. at 405 (citing Ferri v.

Ackerman, 444 U.S. 193, 198 n. 13 (1979)). Rather, the court must examine immunity defenses as a matter of federal law.5 [5. The complaint does not indicate whether Moretti is suing the individual defendants in their personal or official capacity, or both. This distinction is important. Personal capacity suits seek to impose personal liability upon a government official for actions taken under state law. Official capacity suits, in contrast, generally represent another way of pleading a cause of action against an entity. See Kentucky v. Graham, 473 U.S. 159 (1985). Immunity defenses are available only when a defendant is being sued in his or her individual capacity. See Melo v. Hafer, 912 F.wd 628, 636 (3d cir. 1990).

In determining whether a plaintiff has sued a defendant in his or her personal capacity, official capacity, or both, the Third Circuit has directed that the court look to both complaint and the"course or proceedings." Melo, 912 F 2d. at 635 (quoting Graham, 473 U.S. at 167 n. 14); see also Gregory v. Chehi, 843 F.2s 111, 119 (3d Cir. 1988) (court "must interpret the pleading"). The court is to apply a flexible approach in making its determination. Melo, 912 F.2d. at 636 n.7. The fact that Moretti has sued the individual officers as well as the government entities by whom they are employed suggests that the officials are being sued in their official capacity. See Melo, 912 F.2d at 636 (where caption only listed individual defendant and not the state, claim was asserted against defendant in personal capacity). However, Moretti seeks only monetary relief. See Gregory, 843 R.wd at 119-20 (where plaintiff seeks monetry damages, court will resolve doubt in favor of plaintiff and assume that plaintiff is suing

defendant in their personal capacity). It also appears that the individual defendants understood Moretti to be suing them in their personal capacity becase they raised immunity defenses. See Melo, 912 F. 2d at 636. Under these circumstances, I find that Moretti has sued the individual officials in their personal capacity.

In the event Mr. Moretti chooses to amend his complaint, he should specify the capacity in which he is suing individual government officials.

To warrant dismissal under rule 12(b)(6) on the ground of absolute immunity, the allegations of the complaint must clearly indicate the existence of absolute immunity as an affirmative defense. Wilson v. Rackmill, 878 F.2d 772, 775(3d Cir. 1989). The United States Supreme Court has outlined a "functional approach to immunity issues." Schrob v. Catterson, 948 F. 2d 1402, 1409 (3d Cir. 1991). Under a functional approach, it is the nature of the official behavior challenged, rather than the defedant's title or office that controls. Id.

Under federal law, prosecutors are entitled to varying degrees of official immunity. Kulwicki v. Dawson, 969 F.2d 1454, 1463 (3d Cir 1992). As the Third Circuit has recently explained,

Absolute immunity attaches to all actions performed in a 'quasi-judicial' role. This includes activity taken while in court, such as the presentation of evidence or legal argument, as well as selected out-of-court behavior' intimately associated with the judicial phases' of litigation. By contrast, a prosecutor acting in an investigative or administrative capacity is protected only by qualified immunity.

Id. (citations omitted).

"The decision to initiate a prosecution is at the core of a prosecutor's judicial role." Id. (citing Imbler v. Pachtman, 424 U.S. 409, 430 (1976)). Thus, the decision to commence a prosecution entitled the prosecutor to absdoute immunity. In addition, the Third Circuit has applied prosecutorial immunity concepts to civil actions. Id. at 1411 ("absolute immunity is extended to officials when their duties are functionally analogous to those of a prosecutor's, regardless of whether those duties are performed in the course of a civil or ciminal action."); see Butz v. Economou, 438 U.S. 478, 515 (1978)(absolute immunity extended to initiation of administrative proceedings).

Applying these principles to Moretti's allegations, it is clear that plaintioff's allegation that Farlie signed a complaint against him entitles her to absolute immunity.

Moretti's complaint also fails to state a claim against Farlie. The Complaint alleges that Farlie is an employee of the Health Department. Therefore, the first element of a Section 1983 claim is satisfied. The court must therefore determine whether Moretti has alleged facts sufficient to assert that Farlie violated a right or privilege secured by the Constitution or the laws of the United States. The only fact alleged with respect to Farlie, that is, that she signed a coimplaint against Moretti, does not state a violation of any right guaranteed by the Constitution or federal law. Thus, Moretti's complaint as against defendant Farlie must be dismissed.

e. Hackensack Health Department

Moretti's claim against the Health Department

arises from the fact that it issued a complaint against Moretti for failure to supply water to his tenants. Moretti also alleges that the Health Department was responsible for breaking into certain doors in his apartment complex.

The United States Supreme Court has held that a local governmental body can be sued under Section 1983 where "the action that is alleged to be unconsitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted by that body's officers' or is "visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision making channels." Monell v. New York City Department of Social Services, 436 U.S. 658, 690-91 (1977); see also Robb v. City of Philadelphia, 733 F. 2d 286, 291 (3d Cir. 1984). In other words, municipal entities can only be held liable under Section 1983 "when their official policies cause their employees to violate another person's constitutional rights." City of St. Louis v. Praprotnik, 485 U.S. 112, 122 (1988). In contrast, a municipal body cannot vbe held liable under a theory of respondeat superior, that is, it cannot be held liable for the unconstitutional act of an emplyee. Monell, 436 U.S. at 691; Colburn, 838 F. 2d at 571. This is because a governmental entity can only be held liable for acts for which it is responsible, i.e., acts which it has officialy sanctioned or ordered. Praprotnik, 485 U.S. at 123; see also City of Canton v. Harris, 489 U.S. 378, 391-91 (1989)(official policy must actually cause plaintiff's injury).

Here, there is no allegation that the Hackensack Health Department caused any harm to Moretti either

through official policy or custom. There is not a single allegation in the complaint that would provide a basis for finding a nexus between an official policy or custom and any alleged violation of plaintiff's constitutional rights. Thus, the claims against the Health Department must be dismissed.

In addition, Moretti has failed to allege facts demonstrating a violation of a right guaranteed by the Constutiion or federal law. As noted above, the allegation that a complaint was filed against him by the Health Department does not give rise to a constitutional claim. The mere allegation that the Health Department was responsible for breaking into certain doors in his apartment complex also does not rise to the level of a constitutional violation. Although it has been held that the Fourteenth Amendment's protection against unreasonable searches and seizures extends to administrative searches. see Camara v. Municipal Court, 387 U.S. 523, 534 (1967), the Fourth Amendment provides protection only against unreasonable searches and seizures. In this case, there is no allegation that the conduct of the Health Department was unreasonable. 6 [6. To the extent Moretti is claiming that there was destruction to his property amounting to a deprivation of a property interest without due process, such a claim is also barred. The requirements of due process are met when state tort remedies provide an adequate means of redress for deprivations of property. See Paratt v. Taylor, 451 U.S. 527 (1981). Here, the New Jersey Tort Claims Act, N.J.S.A. 59:101, et seq., provides an adequate post-deprivation remedy. See Jusulavage v. Township of West Orange, 1988 WL 68902 (D.N.J. 1985; Ayers v. Township of Jackson, 202 N.J. Super. 106, 128 (App. Div. 1985).]/ Therefore, this

allegation fails to state a claim and will be dismissed.

f. Hackensack Fire Department

Moretti's claim against the Fire Department arises from the alleged frequency of smoke and fire alarms. Moretti also alleges that members of the Fire Department broke doors in his apartment complex.

These claims must also fail. As with the Health Department, there is no allegation that the Fire Department caused any harm to Moretti either through official policy or custom. There is not a single allegation in the complaint that would provide a basis for finding a nexus between an official policy or custom and any alleged violation of his constitutional rights. Thus, the claims agaisnt the Fire Department must be dismissed.

Moreover, the fact that the Fire Department has conducted hundreds of snoke and fire alerts does not give rise to a congizable constitutional claim. And, as with the Health Department, the mere allegation that the Fire Department broke doors in Moretti's apartment does not rise to the level of a constitutional violation. Thus, these claims against the Fire Department will be dismissed.

g. Richard Carucci

The complaint contains no allegations with regard to Richard Carucci's involvement in any alleged violation of Moretti's constitutional rights. As with Mayor Zisa, Carucci was merely listed in the caption. The complaint will therefore be dismissed as to Carucci. See Colburn, 838 F.2d at 673; Dawes, 421 F. Supp. at 821.

h. Hackensack Police Department

Moretti alleges that members of the Police Deparmtent broke doors in his apartment complex. As

with the health and Fire Departments, there is no allegation that the Police Department cuased any harm to Moretti either through official policy or custom. Thus, the claims against the Police Department must be dismissed.

Moreover, as with the Healthy and Fire Departments, the allegation that the Police Department groke doors in Moretti's apartm,ent, in and of itself, does not rise to the level of a constitutional violation. There is no allegation that such conduct was unreasonable. The allegation that the police sought Moretti's assistance to wenter apartments without a warrant also does not state a claim for relief. Finally, his allegations that members of the Police Department were involved with his allegedly illegal arrest and that the warrants for his arrest were not based upon probable cause are conclusory and are insufficient to state a claim. See, e.g. Decker v. Hillsborough County Attorney's Office, 845 F.2d 17, 20 (1st Cir. 1988)(allegation that merely questioned validity of search warrant and did not state any facts why search and seizure may be illegal did not state claim).

i. C. Morrisey

The complaint contains no allegations with regard to C. Morrisey's involvment in any alleged violation of Moretti's constitutional rights. As with Carucci and Zisa, Morrisey was merely listed in the caption. There are simply no factual allegations with regard to Morrisey. The complaint as to him will therefore also be dismissed. See Colburn, 838 F.2d at 673; Dawes, 421 F. Supp. at 821.

j. Henry Amoroso, Hackensack Prosecutor

Amoroso is alleged by Moretti to be "prosecuting a water shut-off case in which the Municipal Court is

supplanting ownership of the property." Moretti also alleges threats to confiscate rent checks and foreclosure and further alleges that such conduct is malicious in nature.

Defendants argue that plaintiff's claim against Amoroso are barred by N.J.S.A. 59:3-8, which provides a judicial immunity defense. 7[7. N.J.S.A. 59:3-8 provides that a "public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment."]/

As noted above, however, state law immunities are not dispositive of federal Section 1983 claims. Rather, federal law controls.

The general principles of prosecutorial immunity under federal law are set forth above. Applying these principles to Moretti's allegations against Amoroso, it is clear that his allegation that Amoroso is prosecuting a shut-off case entitles him to absolute immunity. See **Kulwicki**, 969 F.2d at 1463 (decision to initiate prosecution entiled to absolute immunity); Schrob, 948 F.2d at 1410 (presentation of government's case entitled to absolute immunity) (citing Imbler, 424 U.S. at 431). Moreover, the specific acts alleged in the complaint, that is, threats to confiscate rent checks, have rent paid into court, and force a foreclosure also appear to fall in the realm of prosecutorial activities. These acts appear to be intimately associated with the judicial phase of litigation, that is, prosecution of the case against Moretti, as contrasted with investigative or administrative acts, which would only be entitled to qualified immunity. See, e.g., Schrob, 948 F. 2d at 14 (preparation and application for seizure warrant in civil forfeiture proceeding encompassed within

prosecutor's advocacy role and therefore entitled to absoute immunity).

k. Hackensack Board of Adjustment

Count III arises from Moretti's dissatisfaction with the Board of Adjustment's granting of a zoning variance to defendant Gentile. It is clear that mere disagreement with the Board's decision to grant Mr. Gentile's application for a zoning variance does not rise to the level of a constitutional violation. Moretti however seems to make two claims based on his rights under the constitution in connection with the grant of the zoning variance: 1) that he was not given an adequate opportunity to voice his objections at the hearing on the variance (in violation of his due process rights); and 2) that variances are unfairly granted to some people and unfairly denied to others (in violation of his equal protection rights).

For Mr. Moretti to recover for an alleged procedural due process violation, he must first establish an infringement of a property interest encompassed by the Fourteenth Amendment. See Midnight Seesions, Ltd. v. City of Philadelphia, 945 F.2d 667, 679 (3d Cir. 1991). To have a protected property interest, a person must have a "'legitimate claim of entitlement' to the benefit, created by an independent source such as state law." Id. (citing Board og Regents v. Roth, 408 F. 2d 564, 577 (1972)); see also Brady v. Town of Chester, 863 F. 2d 205, 211-12 (2d Cir. 1988)("In the context of a zoning dispute, to state a claim... for deprivation or 'property' without due process of law a person must establish that he has a valid 'property interest' in some benefit that was protectible under the fourteenth amendment."). Here, Moretti has not

identified any constitutionally protected property interest in his complaint. The fact that under state law, Mr. Moretti was to be given an opportunity to appear at the hearing on a variance application does not create a protected property interest. See Specter v. Garrett, 971 F. 2d 936, 955 (3d Cir. 1992) ("a statutory requirement that certain procedures be observed before a benefit can be withdrawn does not in itself create a protected property interest."). Moretti has therefore failed to state a claim with regard to any due process violation.

Moretti's claim based on equal protection similarly fails to state claim for relief. First, there is no allegation that Mr. Moretti was denied a variance whereas persons similarly situated did obtain variances. In any event, the allegations in the complaint suggest no basis for appling any equal protection standard except the rational basis test. See Rogin v. Bensalem Tp., 616 F.2d 680, 687 (3d Cir. 1980). Under this test, the decision must "so lack rationality that [it] constitute[s] a constitutionally impermissible denial of equal protection." Id., a 688. Moretti, however, has alleged no facts indicating that any act by the Board of Adjustment was irrational. The completely conclusory allegation that variances are unfairy granted to some people and unfairly denied to others therefore fails to state a claim.

L. George Diana

The Complaint fails to state a claim with respect to George Diana. George Diana is named in the caption of the complaint only and is not mentioned in the body of the complaint. Thus any claim as to him will be dismissed. See Colburn, 939 f. 2d at 673. Assuming, however, that the allegations with respect to the Board of Adjustment could be applied against

defendant Diana, the claim as to him would still be dismissed on the grounds of absolute immunity. See Jodeco, Inc. v. Hann, 674 F. Supp. 488, 497 (D.N.J. 1987)(members of zoning board entitled to quasi-judicial immunity in ruling on variance application).

m. Hackensack Water Company

Moretti alleges that the Water Company terminated water services on two occasions and that its water bills were inflated. The Water Company argues that these claims must be dismissed because its actions were not those of a state actor as required under Section 1983. I agree. Moretti's complaint contains no allegation that the Hackensack Water Company's termination of water services was done under color of state law. See Jackson v. Metropolitan Edison Co., 419 U.S. 345, 358-59 (1974) (privately-owned utility company not a state actor for purposes of Section 1983 even though it was subject to extensive state regulation and it held a monopoly in providing services to the area); cf. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (utility that was "division of the city of Memphis" satisfied state action requirement). Even though Moretti alleged that the water termination was done with the knowledge and permission of the Hackensack municipal government, this allegation is insufficient to convert the Water Company into a state actor. The Supreme Court has held that mere authroization, approval, or acquiescence in the water termination practice of a utility does not confer state actor status. Jackson, 419 U.S. at 354.

Moreover, even assuming that the Water Company was a state actor for purposes of Section 1983 and that Moretti had a protected property interest in

continued water service, he has alleged no facts supporting a due process violation. In other words, he has not alleged any facts indicating that his water services were terminated without due process. See Paratt v. Taylor, 451 U.S. 527, 536-37 (1981) (Due Process Clause does not protect against all deprivations of property, only those deprivations "'without due process of law"')(citation omitted). Therefore, his complaint fails to state a claim against the Water Company for this reason as well.

n. Gutterman-Musicant, Inc.

Although Gutterman has not filed a motion to dismiss the complaint, this court notes that there is no allegation in the complaint that Gutterman is a state actor. Although Moretti suggests that there is a "collusion" involving the City Council and Musicant, the mere conclusory allegation of a conspriacy is insufficient to state a claim against a private actor. See 6th Camden Corp. v. Evesham Tp. Burlington City, 420 F. Supp. 709, 731-32 (D.N.J. 1976)(conclusory and unsupported allegations of conspiracy insufficient to state a claim under Section 1983).

For all these reasons, Moretti's complaint will be dismissed. 8 [8. Moretti has opposed the defendants' motions on various grounds. Many of his agruments reflect his misunderstanding of motion practice and procedural rules, and are meritless. Moretti argues, for example, that a party cannot "disguise" a summary judgment motion under rule 56 as a motion for dismissal under Rule 12(b) or a motion for sanctions and that the motions are premature becasue he has not been provided with the discovery he has requested from various defendants. The court, however, is not disposing of Moretti's claims on a

summary judment basis. Rather, the court has confined itself solely to the allegations set forth in the complaint.]/ However, this court will stay dismissal for fifteen days. The Third Circuit has specifically held that "failure to permit amendment of a complaint dismissed for want of specific allegations constitutes an abuse of discretion." Colbur, 838 F. 2d at 666 (quoting Ross, 638 F. 2d at 650). I will therefore grant Mr. Moretti 15 days from the date the Order accompanying this Opinion is filed to amend his complaint, if he so choose. I caution Mr. Moretti, however, that federal district court is a court of limited jurisdiction and that not every perceived wrong committed by a state official rises to the level of a constitutional violation. Mr. Moretti is also cautioned that if he does choose to file an amended complaint, it must contain sufficient factual specificity in accordance with the principles enunciated by the Third Circuit. 9. [9 Mr. Moretti also seeks $10,000 in attorney's fees. However, the Third Circuit has held that a non-lawyer pro se litigant is not eligible for an award of attorneys' fees. See Cunningham v. FBI, 664 F. 2d 383, 384-88 (3d Cir. 1981); see also Carter v. Veterans Administration, 780 F2d 1479, 1481 (9th Cir. 1986). Mr. Moretti's request is therefore denied.]/

B. Rule 11 Sanctions

All moving defendants have requested sanctions pursuant to Rule 11. See Fed. R. Civ P. 11. Under Rule 11, any paper signed by an attorney must be "well grounded in fact and...warranted by existing law or a good faith argument for the extension, modification, or reversal or existing law, and...not interposed for any improper purpose, such as to harass or to cause delay or needless increase in the

cost of litigation." Id. The standard to be applied with respect to Rule 11 is reasonableness under the circumstances. Ford Motor Co. v. Summit Motor Prods., Inc., 930 F. 2d 277, 289 (3d Cir. 1991). cert. denied, 112 S. Ct. 373 (1991). Reasonableness requires an "'objective knowledge or belief at the time of the filing of a challenged paper' that the claim was well-grounded in law and fact." Id. (quoting Jones v. Pittsburgh Nat'l Corp., 899F. wd 1350, 1359 (3d Cir. 1990)). Generally, sanctions are to be imposed only under exceptional circumstances, Morristown Daily Record, Inc. v. Graphic Communications Union, Local 8N, 832 F. 2d 31, 32 n. 1 (3d Cir. 1987), for example, where the "claim or motion is patently unmeritous (sic) or fivolous." Doering v. Union County Bd. of Chosen Freeholders, 857 F. 2d 191, 194 (3d Cir. 1988).

Although this standard applies to pro se litigants, "the court has sufficienmt discretion to take account of the special circusmtnaces that often arise in pro se situations." Fed. R. Civ. P. 11, Notes ofAdvisory Committee (1983 Amendment)(citing Haines, 404 U.S. 519).

"This court will decline to impose sanctions against Mr. Moretti at this time. Taking Mr. Moretti's pro se status into consideration, this court finds that this case does not present the exceptional circumstances necessary to justify imposition of attorneys' fees under Rule 11. Therefore, the defendants' request for sanctions are denied without prejudice.

Conclusion

For the foregoing reasons, Mr. Moretti's complaint is dismissed. However, the dismissal will

be stayed for fifteen days so that Mr. Moretti may amend his conmplaint if he so chooses. In addition, defendants' motions for sanction are denied without prejudice.

U. S. Supreme Court, Oct. Term. 1993, Moretti v. Zisa et al. Petitioner's Appendix. Notice of Appeal from the District Court, Newark, to the U. S. Court of Appeals, 3d Circuit, Philadelphia, Pa. D. C. No. 92-4206 (HAA). C. A. No. 93-5416. NO. _____

Salvatore Moretti
390 Park Street
Hackensack, New Jersey 07601
(201) 646-1414

DISTRICT COURT OF NEW JERSEY

Salvatore Moretti, Plaintiff vs. Mayor John Zisa; The Hackensack City Council; George Diana; The Hackensack Board of Adjustment; Patricia Farlie; The Hackensack Health Department; Richard Carucci; The Hackensack Fire Department; C. Morrissey; The Hackensack Police Department; Henry Amoroso, Hackensack Prosecutor; The Hackensack Water Company; Gutterman-Musicant Inc., G. Thomas Gentile, Defendants	:APPEAL TO THE COURT :OF APPEALS OF THE :THIRD CIRCUIT :NOTICE OF APPEAL FROM :THE DISTRICT COURT :OF N. J. CASE NUMBER : 92-4206 (HAA) : Filed July 8, 1993 : Wm. T. Walsh, : Clerk

NOTICE is hereby given that Salvatore Moretti, plaintiff pro se in the above named case, hereby appeals to the United States Court of Appeals for the Third Circuit from the Final Judgment by Hon. Harold A. Ackerman entered on the 23rd day of June, 13, filed in the United States District Court of New Jersey, Newark, New Jersey

Salvatore Moretti, Pl. Pro Se

Complaint with Jury Demand filed Fed. Dist. Court, Newark, NJ Oct. 6, 1992

Salvatore Moretti, Pro Se
390 Park Street
Hackensack, New Jersey 07601
(201) 646-1414

SALVATORE MORETTI,
Plaintiff

vs.

The Hackensack Board of Adjustment; Patricia Farlie and the Hackensack Health Department; Richard Carucci and the Hackensack Fire Department; P. O. Morrissey and the Hackensack Police Deparmtent; The Hackensack Water Company; G. Thomas Gentile; and Gutterman-Musicant, Inc.

PARTIES

PLAINTIFF: SALVATORE MORETTI, PRO SE
390 PARK STREET
HACKENSACK, NEW JERSEY 07601

DEFEDANTS: HACKENSACK BD. OF ADJUSTMENT:
CHAIRMAN: GEORGE DIANA
VICE-CHAIR.: KRISTI L. IZZO
FRANK W. HOLSTER
MARY ANN GARGANA
CHARLES TUPPONCE
CARRIE GARVIN
MICHAEL SUTERA

TAMMY TROBIANO
MADELYN MANIA

ADDRESS: HACKENSACK CITY HALL
65 CENTRAL AVENUE,
HACKENSACK, NEW JERSEY 07601

PATRICIA FARLIE
HACKENSACK HEALTH DEPARTMENT
215 STATE STREET
HACKENSACK, NEW JERSEY 07601
POLICE OFFICER MORRISSEY
HACKENSACK POLICE DEPARTMENT
225 STATE STREET
HACKENSACK, NEW JERSEY 07601

RICHARD CARUCCI,
HACKENSACK FIRE DEPARTMENT
205 STATE STREET
HACKENSACK, NEW JERSEY 07601

HACKENSACK WATER COMPANY
200 OLD HOOK ROAD
HARRINGTON PARK, NEW JERSEY 07640

G. THOMAS GENTILE
335 UNION STREET
HACKENSACK, NEW JERSEY 07601

GUTTERMAN-MUSICANT, INC.
402 PARK STREET
HACKENSACK, NEW JERSEY 07601

JURISDICTIONAL STATEMENT

Jurisdiction of this court is invoked pursuant to 42 U.S.C. Sections 1981, 1982, & 1983. The state courts have excluded the federal actions through too narrow a view of federal justiciability requirements.

Plaintiff is the record property owner of a 20 unit apartment house at 391-397 Park Street, Hackensack, New Jersey. the county seat of Bergen County. The assessed value of the buildings is $766,800, with the assessed value of other owned parcels equal to $266,300; the annual Hackensack real estate taxes are $24,897.71.

In the case at bar, the subject neighborhood in the central business district has gone through a major population change - more welfare recipients compose the tenant population, the 500 apartment units (three of the buildings are new) on the four blocks composing Park street house 700 tenants who demand services to cope with difficult social, family, and ethnic problems. The city's response is smoke alarm drills, police checks, and health citations, which are of an emergency nature and hence provide no long term relief. Responding to daily emergencies calls for on-site management, drives up costs, and all but eliminates daily maintenance.

In the case at bar, plaintiff has sought state judicial relief in the Law Division, Chancery Division (C-2541-78, C-4640-78, C-545-79), State Tax Court (Moretti v. Hackensack, Docket No. L-5847-78, 02-23400A-79), and Appellate Division over a period of forty years. Operating through a number of mayorships (Moretti vs. Frank C. Zisa, Mayor of the City of Hackensack, John J. Johnson, Hackensack Tax Assessor, and the Bergen County Board of Taxation, Docket No. L-200600-80), class act-

ion status has matured through several rent control challenges, and through several apartment owners associations.

Due process violations are significant within. These violations work hardship on the seven hundred tenants living on Park street through increased costs at a time when many are on fixed incomes, whether due to age, or welfare, or unemployment. A city once content to act through well maintained buildings, now finds surprise police and fire inspections more persuasive. Several hundred fire drills have boosted turnover rates to the 50%-85% level in the affected areas, where the prior turnover was 10% per annum. Long term investment in competent housing maintenance is replaced by a preference for filing summonses for insignificant repairs, substituting municipal oversight for competent onsight management. The fifth amendment to the constitution prohibits the taking of private property without just compensation. Plaintiff's attempt to produce tax relief produced only negligible reductions in assessments. Despite significant investments in residential housing in the subject neighborhood, poor living conditions require a direct federal consitutional and statutory challenge.

The recent water shut-off case is a case in point. This is a case filed in the State System, Superior Court-Law Division, Moretti vs. Hackensack Water Company, and Board of Regulatory Commissioners Docket No. BER-L-8191-92 (a water shut-off case). This case is currently being heard in the Hackensack Municipal Court as a nuisance case, State of New Jersey vs. Salvatore Moretti (with third party complaint against the Hackensack Health Department, the Bergen County Sheriff's Office, and the Hack-

ensack Police Department S426599, W337641, W337641. The municipal court summons reads as follows: "Complainant Patricia Farlie of the Health Department upon oath says that between 28th of July to 17th of August, 1992, in the City of Hackensack, County of Bergen, did: within the jurisdiction of this court fail to supply a plentiful supply of pure water suitable for domestic and personal use to all tenants and fail to supply hot water to apartment (sic) located at 391 Park St after notice had been given by the City of Hackensack. contrary to sections 114 Ordinance 51-78 Section 114-2 (10) Ordinance 24-81 Section 98-3. - Summons Issued 8-18-92."

This case is also being heard as a bill dispute by the Superior Court Special Civil Part,DC-705907-92. In the municipal court subpoenaed witnesses do not appear, August 19 and 26, 1992. The municipal court refuses to hold non-appearing witnesses in contempt.

An interlocutory appeal to prevent irreparable harm was heard by Judge Naomi Eichen, J.S.C. on July 14 and 27, 1992. On August 7, 1992, Judge James T. Murphy, J.S.C. heard plaintiff's motion for an injunction. On August 13, 1992 plaintiff filed a motion for leave to appeal from the Order of Judge James T. Murphy, J.S.C. Order dated August 7, 1992. That order held as follows:

"This matter being opened to the Court by Salvatore Moretti, plaintiff property owner and ...it NOT appearing that due notice of this motion has been served upon the defendant Hackensack Water Company and Board of Regulatory Commissioners, it is on this 7th day of August, 1992, ordered that the motion to restrain the Hackensack Water Company from Discontinuing Water Service to Park Court Apartments is

denied."

An August 8, 1992 motion for rehearing delivered to the defendant water company and deputy attorney general was denied, and plaintiff within appealed to the appellate division - On August 13, 1992, the water company dispatched a work crew to shut off the water, and plaintiff supplied the supervisor on site with a copy of the Notice of Motion. On the day of oral argument, August 14, 1992, at 10:00 a.m. plaintiff spoke to the Appellate Division making last minute arrangements while a Hackensack Policeman broke into his office and listened at the door. Upon hearing his presence discussed with the Appellate Court, he quickly departed. The Appellate Division inquired whether plaintiff believed that the trial courts could provide relief. He replied that he believed Judge Naomi Eichen was concerned about the facts of the case. However, she had been advised by Deputy Attorney General Michael Berman, Esq. representing the Board of Regulatory Commissioners at hearings on July 14, 20, and 27 on the motion for an interlocutory injunction - order to show cause, and by John P. Wallace, Esq. representing the Hackensck Water Company, that the Office of Administrative Law in Newark had primary jurisdiction over the matter. Plaintiff within questioned this, on the basis of the history of the law in New Jersey and the decisons by Chancery-Equity courts on water shut-off cases.

Not only has the case law changed in this area of the law since the 1800's but the New Jersey Administrative Code has changed in favor of more protection for consumers versus the utility companies, gas, electric, and water. For example, N.J.A.C. 14:3-7.12 dealt with Notices of Discontinuance, N.J. A.C. 14:3-7.12A protects welfare recipients in case of

termination of utilities, N.J.A.C. 14:3-7.13 provides for bill disputes. In the case here, Moretti received bills for three years for 5,873,296 gallons of water, totalling $17,024.17. N.J.A.C. provides that (a) a utility shall not discontinue service because of non-payment of bills in cases where a charge is in dispute; N.J.A.C. 14:3-7.13(c) deals with deferred payment agreements where 25% of the bill may be collected N.J.A.C. 14:3-7.14, deals with discontinuance of residential service to tenants. N.J.A.C. 14:3-3.8 deals with access to customer's premises. Here the plaintiff within insisted that his meter be read, maintained an on-site office, but the water company relied on estimates. With the 12 quarter three year total at 5,873,296 gallons, that figures out to 1,957,765 gallons per year, and for 20 apartments that computes to 268.19 gallons per apartment per day. The total cost of $17,024,17 for the past three years figures to $5,674.72 per year. This water consumption was during a perid of higher than usual vacancies. Figuring one toilet flush at 3.5 gallons, every toilet on the property (20 toilets) would have to be flushed 76.63 times to consume that much water. At three minutes per flush, this means that 3.8 hours each and every day for each and every apartment the toilet would have to be flushed. For one bedroom apartments, this is not reasonable. N.J.A.C.14:3-4.10 deals with meter replacement. N.J.A.C. 14:3-7.9 deals with forms of bills for metered service. Section b-1 requires that utility companies shall maintain a regular meter reading schedule and make a reasonable effort to read all meters.

No effort was made to read the meters, since the water company depened upon a non-functional telephone meter reading system that had not worked for three

years. Subsection 6 of N.J.A.C. 14:3-7.9(b) reads that "if low estimates result in a customer receiving an actual bill that is 25 percent greater than the prior estimated bill, the company shall allow the customer to amortize the excess amount". The amortization will be in equal installments over a period of time equal to the period when no actual reading was taken by the customer or the company. In the case sub judice, "defendant received four estimated bills in the last six quarters...a bill for $1,008 follows one for $747 (35% increase), one for $1,242 follows one for $871 (40% increase), one for $2,470 follows one for $1,297 (200% increase immediately before the shut-off). This is a true bill-dispute in the eyes of the judicial decisons of New Jersey and the majority of jurisdictions.

In a September 16, 1992 letter to Judge Edward J. Van Tassel, J.S.C. plaintiff within wrote as follows: "What Berman (the Deputy Attorney-General) seems to be avoiding is the law, namely that there is a good faith dispute exception which prevents water shut off. 28 A.L.R. 472.112 ALR 237, Sims v. Alabama Water Company 205 Ala 378, 87 So. 688, Birmingham Waterworks Co. v. Keiley (1911) 2 Ala. App. 629, 56 So. 838, (1912), 5 Ala. App. 474, 59 So. 338, Birmingham Waterworks Co. v. Davis (1918) 16 Ala. App. 333, 77 So. 927, Louisville Tobacco Warehouse Co. v. Louisville Water Co. (1915) 162 Ky. 478, 172 S. W. 928...Cases holding an injunction should issue are Wood v. Auburn, 87 Me. 287, 287 L.R.A. 376, 32 A.T.L. 906, Carter v. Suburban Water Co., 131 Md. 91, 101 Atl. 771, Gordon & Ferguson v. Doran, 100 Minn. 343, 111 N.W. 272, Mansfield v. Humphreys Mfg. Co. 92 N.E. 233..." In plaintiff's September 8, 1992 letter to Berman and Wallace, he wrote as follows: "In Montalvo

v. Consolidated Edison Co. of N.Y., 441 N.Y.S. 2d. 768 the conflict between the law courts and the exhaustion of administrative remedies came up and was decided in favor of the legal remedy...It would be futile to seek exhaustion of administrative remedy. Watergate II Apartments v. Buffalo Sewer Authority, 46 N.Y. 2d. 52, 385 N.E. 2d. 560 (1978)...In Bradford v. Edelstein, 467 F. Supp. 1361 (1979) a customer filed a 14th amendment U. S. Constitution case with the Texas District Court after his water shut-off. The court found that he received no hearing prior to shut off and that the plaintiff's rights were violated. He was allowed to sue under 42 U.S.C.A. Section 1983 and as a class action suit.

Due to the languge of Judge Murphy's decision, "and it NOT appearing that due notice of this motion has been served upon the defendants" the Appellate Division order on August 14, 1992 stated that new notices should be sent out in its August 14, 1992 order. The order reads: 1) The denial of the motion for a mandatory injunction is without prejudice to movant's right to apply to the trial court on notice to respondents for such relief as may be approprate, and 2) respondent, Hackensack Water Company, shall forthwith notify the Bergen County Board of Social Services and the Bergen County Housing Authority of the shut-off of water services at the indicated address and of the rights of the clients...to make individual arrangements for reconnection of water service." Practically, the result was that the Bergen County Housing Authority refused to pay its subsidy rent payments.

Armed with the Appellate Division order, plaintiff within filed a motion for an interlocutory injunction and sought a judge on emergent duty on August

14, 1992. None was available. Finally, after having waited in five courtrooms until 5 pm on August 14, plaintiff left to return Monday morning at 9 am. Judge Patrick F.X. Fitzpatrick was to hear the motion at 1:30 p.m. On that day, John P. Wallace appeared on behalf of the water company. Plaintiff's law division case had been filed June 26, 1992, the water was shut off on August 13, 1992. The judge advised plaintiff to proceed into the corridor and offer Mr. Wallace a check. With check in hand plaintiff went into the corridor whereupon he was arrested under an outstanding warrant for his arrest put out by a vigilant Hackensack municipal court judge, Louis Dinice. The plaintiff was placed in the Bergen County Jail Annex on River Street. The $10,000 bail money put up to extricate him from the jail was then used to pay the outstanding water bill, according to the Hackensack municipal prosecutor. Municipal oversight had turned into a substitute property management office and paid the clearly excessive bill.($17,000 for three years of use of 5.9 million gallons of water). Instead of the desired economy and benefit to tenancy, a 500 gallon per day per apartment water bill was paid, unjustly high for welfare clients.

When plaintiff appeared before the Hackensck Municipal court he asserted that the water company did water searches for Hackensack and hence had an unfair advantage, the judge verbally demanded rent payments by the welfare agencies be seized. A building properly requiring less than twelve hours per week now requires twelve hours per day.

Plaintiff within filed a zoning complaint against G. Thomas Gentile, Gutterman-Musicant Funeral Parlor, & Hackensack Board of Adjustment, Docket No. BER-L-09278-92;(a variance to put a funeral parlor onto

residentially zoned R-3B Park street), In this action G. Thomas Gentile applied to the Hackensack Board of Adjustment for a variance from the zoning code on July 15, 1992. Applicant sought to put parking within five feet from the adjoining lot lines in a residential district, and "for such other variances as the Zoning Board may determine are necessary at said public hearing." At that meeting applicant appeared without professional planner, or architect, or traffic expert. Applicant was the sole witness testifying in behalf of the variance. Moretti testified in opposition. The variance was granted after a very brief discussion by the Board of Adjustment.

In State of New Jersey vs. Salvatore Moretti vs. Hackensack Fire Department, Richard Carucci, and the Construction Board of Appeals, Municipal Court Docket No. 92-2449, plaintiff was fined for failing to make door repairs at the site. The fine was based on an order which was changed by the Construction Board of Appeals upon application by Moretti, hearing on June 2, 1992, Case #C-8-92. When the new orders were issued by the Construction Board, Moretti was in compliance but the old fine was inexplicably left intact. The fire department official, Richard Carucci filed a complaint on behalf of the Hackensack Construction Board of Appeals with the Municipal Court. Plaintiff filed a third party compaint against Carucci and the Construction Board. The fire department had performed the inspections and made recommendations relating to fire-proof doors at the Park Court buildings, pursuant to the Uniform Fire Code regulations.

The Hackensack city attorney wrote to plaintiff and Judge Louis Dinice by letter dated August 25, 1992 that there was no such thing as third party practice in any municipal court in New Jersey, hence plain-

tiff's third party complaint must be dismissed. Clearly third party practice, cross-complaints, and counter-complaints are filed at all levels of the judicial system. The Rules of general application apply to municipal courts. As stated in R.1:1-1," Unless otherwise stated, the rules in Part I are applicable to the Supreme Court, the Superior Court, the Tax Court, the surrogate's court, and the municipal court." The 1992 edition of Pressler, Rules Governing the Courts of the State of New Jersey, comments on this rule that "local rules are particularly improper where the import of the local rule is to attempt to withhold from the trial judges of the vicinage the right to resort to the full panoply of procedures and discretions expressly authorized by the rules. See Cunningham v. Rummell, 223 N.J. Super 15, 18-19 (App. Div. 1988)." In the case at bar, the facts of the case cannot be evaluated without resort to third party practice. Rule 1:1-2 provides for the Relaxation of the rules in order to secure a just determination, and produce fairness in administration. The Rules of General Application at R. 1:6-4 provides for the filing of motions, cross-motions, and affidavits and orders. R. 1:6-4(b)(7) provides for joining additonal parties or impleading parties or certifying as a class action. Although these seem to be Superior Court matters, if the problem is municipal and the municipal court is required to deal with local matters, then the local court must exercise judicial cognizance over the substance of the dispute.

The Hackensack City Attorney challenged the discovery open to plaintiff. Plaintiff filed interrogatories on various parties, such as the Hackensack health department, the Hackensack police department, the Construction Board of Appeals, etc. citing to the

Rules Governing Practice in the Municipal Courts. specifically R. 7:4-2. Proceedings Before Trial Section (h): "Deposition and Discovery in any case in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted shall be as provided by R. 3:13-2 and R. 3:13-3 provided that the municipality in which the case is to be tried has a municipal prosecutor."

Richard E. Salkin, Esq., Hackensack City Attorney, by letter of August 25, 1992 in re State -vs- Moretti 92-2449, stated as follows:

Please be advised that I am the City Attorney for the City of Hackensack. As such, the purported interrogatorites delivered by you to Battalion Chief Carucci's office have been forwarded to me. Please note the following: 1/ The case caption you have created, purporting to designate the Hackensack Fire Department, Richard Carucci, and the Construction Board of Appeals does not exist. There is no "Third Party Practice" in Hackensack or any other Municipal Court of this State. 2/ Similarly, there are no provisions for the service of Interrogatories (nor the answers thereto) under the Court Rules you have cited. The Hackensack Fire Department, Battalion Chief Carucci, and the Construction Board of Appeals will not be responding to your "Interrogatories". Please govern your actions accordingly.

An additional letter was delivered by the City Attorney on September 11, 1992, in re State -vs- Moretti, Summons Nos. C-92-2946, C-92-2916, and C-92-2940: "I note that you have again sought to serve purported interrogatories upon the City of Hackensack regarding matters now pending in the Hackensack Municipal Court. As I have previously advised you (by letter of August 25th, 1992) there are no provisions

for the service of Interrogatories (nor the Answers thereto) under the Court Rule you have cited. Therefore, neither the City nor any agent thereof will be responding to your "Interrogatories". I would suggest that you consult further with the Rules of Court to ascertain how to obtain discovery with respect to quasi-criminal charges now facing you." cc: Honorable Louis Dinice, J.M.C.

On August 26, 1992, Paul L. Potenza, 155 Polifly Road, Hackensack, wrote in re State of N.J. v. Moretti v. Hackensack Fire Department, et al.," 92-2449, as follows: "Please be advised that I am the attorney for the Hackensack Construction Board of Appeals. I have reviewed the documents entitled "Interrogatories Served by Third Party Plaintiff Upon Fire Department, Richard Carucci, and the Construction Board of Appeals" which you forwarded to and which were received by Construction Official George Dalie yesterday, August 25, 1992...There will be no answer to these interrogatories forthcoming from any of the parties you have designated as "third party defendants" in what further appears to be your self-styled and fictional "caption.'" Thank you. The value of third-party practice is the joining of parties not named in the main action without whose presence the action is incomplete. As noted in Perello v. Woods, 197 N.J. Super 539 (Law Div. 1984), the Court denied a motion to dismiss by the third party defendant, City of Newark, which was premised upon the lack of Notice of Claim by the plaintiff. The court considered and declined to follow the opinion in Ezzi vs. De Lurentis, 172 N. J. Super. 592 (Law Div. 1980). In part the court relied upon the policy against piecemeal litigation." Government Tort Litigation in New Jersey, p. 47. 2nd ed., John S. Fitzpatrick. N.J.I.C.L.E.

Pressler Current New Jersey Court Rules, (Comment) to Rule 4:8-1. Third Party Brought in by Defendant, states that "Thus a third-party complaint for contribution by either a public or non-public defendant may be served upon a public entity covered by the New Jersey Tort Claims Act, N.J.S. 59:1-1 et seq., although neither the plaintiff nor the third party plaintiff has, with respect to the third party defendant, complied with the time requirements of N.J.S. 59:8-8, and although that non-compliance would bar the plaintiff from amending his complaint to state a claim against the third-party defendant. See Markey v. Skog, 129 N.J. Super. 192 (Law Div. 1974); Dambro v. Union City Pk. Comm., 130 N.J. Super 450 (Law Div. 1974); cf. Speer v. Armstrong, 168 N.J. Super 251 (App. Div. 1979), affording plaintiff the benefit of defendant's timely actions vis-a-vis a municipal third party defendant."

Plaintiff's September 27, 1992 letter to Judge Dinice notes that "the possibility of prejudice of defendant's whole controversy status requires service of such third party complaints preferably with the answer to the complaint, as was done in the municipal court matter involving the Hackensack Water Company and the administrative inspection by the Fire Department. The defendant cannot force the plaintiff to institute lawsuits against the third party defendants who may be wholly responsible for the case against the defendant. In such a case, impleading is required for without it, the cause of action has no meaning whatever."

As noted in Moore, Federal Rules Pamphlet Rule 14, impleading permits all claims arising out of the same transaction or occurrence to be heard and determined in the same action. Atlantic Coast Line R. Co.

v. United States Fidelity & Guaranty Co., Ga. 1943, 52 F. Supp. 177.

On June 14, 1992, a rather insignificant event jolted consciousness. Two white Hackensack police officer broke into Edwina Alexis' apartment at Park Court Apartments. At noon Sunday plaintiff suggested that the Hackensack police should check if there was anyone in the apartment first by using the pass-key he held in hand. This commonsense approach was rejected with the statement that welfare recipients need not have a warrant to effect entry. The fire department was called to axe the door down. The result was that a deadbolted steel door was broken down; the city attorney stated in his Answer that there was no claim - due to the New Jersey Tort Claims Act. But the Tort Claims Act does not insure those who act with malice. Section 1983 does not depend upon satisfying the qualification of the New Jersey Tort Claims Act for it to be effective. Plaintiff's fourth amendment rights had been violated, the right to be free from unreasonable searches and seizures.

As a result of the above described events, plaintiff filed suit in the Special Civil Part of the Superior Court Salvatore Moretti vs. Edwina Alexis, Hackensack Police Department, and Hackensack Fire Department, Docket No. DC-700124-92. Interestingly, not one interrogatory has been answered by Hackensack or any of its agencies, which claim through the city attorney that the municipality need not answer.

Richard E. Salkin's Answer dated July 24, 1992 states as follows: "The City of Hackensack, A Municipal Corporation of the State of New Jersey, incorrectly described as the "Hackensack Police Department" and the "Hackensack Fire Department" in the Complaint, says, by way of Answer to the Complaint:

1. The allegations contained in the complaint as they pertain to this Defendant, are DENIED.

FIRST SEPARATE DEFENSE

The complaint fails to state a cause of action upon which relief may be granted.

SECOND SEPARATE DEFENSE

This defendant violated no duty owed to Plaintiff.

THIRD SEPARATE DEFENSE

The Complaint is barred by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq."

When plaintiff maintained before the state court system that there was a constitutional dimension to his lawsuits, this was denied. Maintaining an office and residence in the subject neighborhood for two decades on a daily basis proves that the official response was wrong. When plaintiff maintained that the state court system should enforce the Constitution of the United States and of the State of New Jersey, that was denied. The official response was wrong. When plaintiff maintained that his federal civil rights guaranteed under 42 U.S.C.A. Section 1983 were violated, that was denied. The casual response was that civil rights were not interpreted that way, here. Civil rights suits were pragmatically used to put people into housing with subsidy agents paying their rent. This official administrative response is too narrow.

Unfortunately, smoke alarm alerts are manufactured to gain control over properties. At 370 Park Street (constructed in 1980), a nearby 72 unit building, ten fire alarm alerts in one day occurred, thirty-five in one week, about 200 in one year. The owner was forced into receivership and a sale. The mortgage had to be recast.

Plaintiff within has suffered from numerous administrative searches. Such searches while often at the behest of health inspectors or fire officials, can involve threats of warrants issued on the slightest pretext. Plaintiff has suffered through every imaginable administrative search from squirrels in the attic to dampness in the cellar. The fact that the complaining witnesses had just bounced three twelve hundred dollar checks or were incarcerated in Bergen Pines had not been considered. Tenants use health complaints as a pretext to reduce rent payments. Since municipal officials cannot keep pace with rapid tenant turn-over, tenants merely effect the results necessary in maintenance to reduce living conditions which then can be utilized to reduce rent demanded. This drives responsible management to sale, resulting in large scale block busting. Excessive conversion of rental stock into condominium or cooperative housing removes good apartment units from the rental market, which is preferred by lower income households such as those subject within.

To quote the Transcript of Proceedings of the Hackensack Municipal Court Docket No. C89-2519, Hon. Louis J. Dinice Presiding, September 28, 1989 (vol. 1):

Mrs. Mandeville: The problem is that there's an odor emanating from the basement area of Mr. Moretti's business...

Judge Dinice: Mr. Moretti...you will be held in contempt of court and you'll be arrested--...Mr. Moretti, did you hear what I just said?

Mr. Moretti: (ommitted - members of the Hackensack police department) were in there three nights all night long.

Judge Dinice: You are to leave here immediately and

allow Mrs. Mandeville into that area that she wants to get into.
Mr. Moretti: She was already there.
Judge Dinice: I don't care whether she was there or not...Sir, I'm speaking. Okay? Mrs. Mandeville is going to go there right now. All right. You're going to remain in Court. All right? If the door is not open, you're going to go to jail. It's as simple as that. All right?
Mr. Moretti: Shall I give you the names of the people in that case?
Judge Dinice: Sir, sir, did you hear what I just said? Did you hear what I just said?...If he refuses to open the doors just let me know and I'll issue a warrant for his arrest...
Mrs. Mandeville: He opened the door for us, Your Honor...
Judge Dinice: Any idea what the odor is, Mr. Moretti?
Mr. Moretti: I, I have no idea of what Mrs. Mandeville is referring to. As a matter of fact, I was just there and there is absolutely no odor present in that area--
Judge Dinice: Here is what I would suggest you do, sir (the tenant - a witness). Take whatever course of action you must take, at whatever expense, and deduct it from the rent and then let Mr. Moretti bring you to landlord and tenancy court. And then when you have to go to Court, when he sues you for the balance due on the rent, you can bring Mrs. Mandeville in and you could also subpoena the transcript of this hearing... If he disobeys that order he will be arrested.
Mr. Moretti: -- I would request cross-examination of the complaining witness.
Judge Dinice: There is no cross-examination. We haven't had a trial yet...Cross-examine - Mrs. Beavers.

Mr. Moretti: Have you ever seen an Exhibit, which I have here for marking, which states that due to the late payments of certain residents of the apartment house I am commencing to evict dated August 1, 1989--Exhibit 10.
Judge Dinice: Not relevant, it will not be used...Next question.
Mr. Moretti: Have you ever been specifically advised that because of the impersonation of your husband as a police officer, that his approach to various tenants in order to prevent access to the apartment is improper?
Judge Dinice: Not relevant. Next question.
Mr. Moretti: Have you ever been advised that your vehicle which bears the statement that your husband and you are members of the Teaneck Police Department, is illegally parked on the premises?
Judge Dinice: Not relevant, Next question.(Next question asked) Not relevant. You'll be--not required. You'll be not permitted to ask any further questions because your questions are not responsive to the issue before the court. Thank you. You may sit down, Ma'am...(Mr. Beavers sworn in, and cross-examined.) Excuse me Mrs. Mandeville, you're still under oath. Have you ever determined what the source of the odor was?
Mrs. Mandeville: No, You Honor, I haven't...
Judge Dinice: In your opinion, is it detrimental to the health of the people living above that odor?
Mrs. Mandeville: I don't know what the odor--I don't know what the chemical is. I don't know what kind of an odor, you know, whether it is or isn't detrimental.
Mr. Moretti: (Cross-Examining): Have you any report from the Bergen County Police or the Health Department or is there anyone in your employ or associated

agencies of the Hackensack Municipal Government which has delivered to you a specific piece of paper or document or any information, which you can produce today, stating that the odor or chemical or agents which are subject to this complaint are detrimental to the health of the apartment occupant of 397A Park Street?
Mrs. Mandeville: No, I can not. (Next, Mr. Moretti sworn in.)
Judge Dinice: Do you have any idea where the odors are coming from?
Mr. Moretti: The odors--what odors? You've not identified which odors. There may be thirty classes of odors.
Judge Dinice: You know I'm finding your attitude very contemptuous and in about thirty seconds, I'm going to commit you to the Bergen County Jail....Okay. I've heard enough. I've had an opportunity to hear the testimony, where--the credibility of the witnesses before me. I find you guilty of violating this particular ordinance (Summons S257805, September 25-27, 1989, Violation of Ordinance 51-78, and Ordinance 114-2.18.) The fine will be $500, $25 costs and $30 to the VCCB. Thank you, pay the clerk.

Plaintiff has continuously raised constitutional challenges, without avail. A basic right denied is the right to legal representation guaranteed by the sixth amendment to the constitution. When plaintiff insisted upon filing legal papers through his attorney a decade ago, Robert Hollis, Esq., Hollis failed to serve summons and complaints and was suspended from the practice of law - notice dated February 4, 1982 New Jersey Law Journal (Salvatore Moretti vs. Robert A. Hollis, Esq et. al. Docket No. L-48567-79.). The subject matter of the complaints (Chancery Division Cases: C-2541-78, C-4640-78, C-545-79) grew out of a

similar fact pattern in the litigation in this jurisdictional statement. Plaintiff demanded trial by jury, guaranteed by the seventh amendment - "in suits at common law...the right of trial by jury shall be preserved." Hollis had filed three law division cases and complained to plaintiff about the switch into chancery - in cases like these, if you file in law they complain you should have filed in chancery, and if you file in chancery, they complain you should have filed in law.

Exactly ten years ago, October, 1982, plaintiff herein filed a Notice of Motion for Leave to Appeal from An Interlocutory Injunction by Superior Court - law division (Bergen County) Judge Leo Yanoff. Judge Yanoff had ordered the inspection of plaintiff's federal income tax returns in the malpractice suit (which resulted in Robert A. Hollis, Esq. being suspended from the practice of law). The statement of facts, although written a decade ago, precisely foretells the situation today. The motion was on appeal from the order of Judge Yanoff entered on September 28, 1982. When plaintiff appeared for the hearing on his case, he was jailed by Yanoff. Quoting from papers submitted to the appellate division of the Superior court of New Jersey: "The complaint in this lawsuit was filed by Salvatore Moretti on May 12, 1980...Moretti filed the lawsuit pro se because he was unable to retain legal counsel to handle the matter." (The order entered by Judge Yanoff required that Moretti retain legal counsel, and produce federal income tax returns, the bug-a-boo of lawyers peering into one's financial affairs, even though a legitimate legal malpractice matter was involved.) "This is a legal malpractice case charging the defendant law firm and its members, Hollis and Pessin, with negligently handling litigat-

ion. The complaint contains ten counts...A veritable deluge of mail from the defendants and from Judge Yanoff has cluttered plaintiff's mails, tieing up his life in endless paperwork. Plaintiff's business and education have come to a stand-still. The demands of the defendants are never ending and oppressive. Appeals to Judge Yanoff have been futile...The defendants were to institute suit against the Gutterman, Musicant...funeral parlor, but failed to do so... (Count Five): This count deals with nuisances emanating from a boarding house located at 111 Passaic Street, Hackensack. That boarding house...burned down on March 10, 1978. It is 65 feet from Park Court Apartments, and it is adjacent to the (Gutterman-Musicant) parking lot. (Count Six): This count deal with a traffic "accident"...Hollis admitted two years later that he was a close personal friend of (the driver of the vehicle)...Hollis counseled against filing suit against them. (Count Seven): This count deals with the (Gutterman-Musicant) funeral parlor and its attempt to expand into the R-3B use district occupied by Park Court Apartments. (Count One): The defendants were to institute suit against the (Gutterman-Musicant) funeral parlor - which rented a home - adjacent to Park Court Apartments (387 Park Street) to North Jersey Friendship House (a psychiatric half-way house)... (Quoting the hearing on the motion on September 28, 1982): Judge Yanoff: Mr. Moretti, if I had a sergeant-at-arms here I would have--I am putting this on the record--I would have to direct him to physically take you away from the counsel table." Plaintiff appealed from the grant of summary judgement as to counts 1, 3, 4, & 8, Filed September 30, 1982,to the New Jersey Supreme Court L-48567-79, 80-3528, Appellate Division docket

No. AM-1108-81T1.

The Supreme Court of New Jersey, District Ethics Committee for Bergen County, District II, File No. II-79-41E met on April 3, 1980, with committee members present, Gary Stein, Esq., Joseph C. Woodcock, Esq., Walter Gloeckner, Lay Member, Donald R. Sorkow, Esq. attorney presenting for the committee, Robert A. Hollis, Esq., pro se. The manner in which this committee treated plaintiff within is suggestive of the problem with client's rights in the state court system. Instead of being allowed to speak simply, plaintiff's testimony was tailored by continuous interruptions, making Hollis look innocent, and over simplifying the matter. To quote verbatim from the transcript:
Mr. Stein: "What would help us would be, Mr. Sorkow, if you examine Mr. Moretti as to the matters charged in the complaint.
Mr. Sorkow: Right.
Mr. Moretti: By way of explanation--
Mr. Stein: There's no question for you. There's no question to you now.
Mr. Moretti: Well, what I'm stating is that--
Mr. Stein: Mr. Moretti, excuse me. Mr. Sorkow is going to question you...Mr. Sorkow, could you proceed.
Mr. Moretti: Yes. I would like to have a transcript in regard to (my testimony)--
Mr. Stein: No.
Mr. Moretti: --In regard to Rule 1:20-5.
Mr. Stein: We've had a request for a transcript for a transcript from another witness and I recall you making that request before. As I stated before, and now I'll say it on the record, it's my understanding that you're not entitled to a transcript. But I'm going to inquire with Central Ethics, that administers the Ethics Rules and Procedures, and if I'm wrong, we'll

supply you with one, But my understanding of the Rules is that you're. not entitled to one...
Mr. Moretti: Well, you just stated that regarding the rules. I quote from Rule 1:20-5.
Mr. Stein: Excuse me. I am not going to make that determination now. I want to consult with Central Ethics...
Mr. Moretti: There's no reason to go back to the matter. It's one sentence. I can read it.
Mr. Stein: Look: I will run this hearing and you're either going to cooperate or we'll excuse you. But this is not you're hearing. This is an Ethics Committee hearing. You're a witness. You're here voluntarily or by subpoena?
Mr. Sorkow: Voluntarily.
Mr. Stein: We would like you to testify in accordance with our procedures and that's what we want you to do...
Mr. Sorkow: I'd like to offer into Evidence this letter from Mr. Moretti to Mr. Hollis dated November 3, 1978. Any objection?
Mr. Hollis: No. No objection.
Mr. Stein: C-11 in Evidence.
Mr. Sorkow: Now in this letter dated November 3, 1978, marked C-11 in Evidence, Mr. Moretti, you state in your last paragraph: "I am interested in a class action and consolidation of zoning matters, which you suggest, but I feel we should bring all matters to light at our November 18, 1978 hearing***." Where did you get the information that there was going to be a hearing on November 17, 1978?
Mr. Moretti: Mr. Hollis told me...that date had been assigned for the court to hear the Fridenship House lawsuit.
Mr. Sorkow: I see. Was there in fact a hearing on No-

vember 17, 1978?
Mr. Moretti: No. There was not....
Mr. Sorkow: Did there come a time that you determined that there was an order dismissing this case on October 25, 1978?
Mr. Moretti: Yes. Hollis never appeared at trial before a jury. No money award for damages ever resulted. Instead Judge Yanoff merely dismissed the case after five years of legal maneuvers moving back and forth between non-jury trial courts and appellate courts.

Typically, necessity dictates that economic interests rely upon speedy approval of variances by Boards of Adjustment such as Hackensack's zoning board. One such case involved Jademar Industrial Company's application for a variance at 381 Park Street, Hackensack. Hollis failed to serve summons and complaint in this case as well. The Superior Court of New Jersey, Appellate Division, A-3609-78, upon hearing the appeal of the variance found as follows (April 23, 1980): PER CURIAM
"Although failure to issue summons within "10 days after the filing of the complaint" is proscribed by R. 4:4-1, dismissal of the complaint for violation of the Rule is not warranted by the delay alone--there must be a resultant prejudice to the rights of the defendant consequent upon the delay. (Cites ommitted) Inasmuch as the dismissal here was made without an inquiry into the issue of prejudice, without any proofs with reference thereto and without any finding of prejudice to the defendant Jademar as a result of the delay in the issuance of process, the judgment of the Law Division must be reversed and the cause remanded for a plenary hearing and a determination of said issue in light of the applicable law...Our re-

view of the entire record satisfies us that the variance was improperly granted...Reversed and remanded."

Hollis rejoined the bar as an attorney in criminal practice, Jademar continued in its office building, the funeral parlor sold the friendship house to a real estate developer for development as a parking lot. When the developer met with opposition at the board of adjustment, he sold the property to Jademar. Plaintiff purchased the single family house known as 390 Park Street (Block 415, Lot 8B)(September 30, 1980); Jademar busily completed their office building and when plaintiff within completed legal training purchased this lot (Block 418,Lot 24)(February 25, 1985).

Since Hackensack has a combined sewer and septic system the State has required that it be separated, and in the interim only dry-hook ups are permitted. This has effectively prevented developement of the 10,000 square foot site, which is now vacant - as a result of the prior ownership. Gutterman-Musicant purchased the property for $45,000 and used its existing boarding house. Now a vacant lot, it is currently assessed at $90,000 over its prior assessment.

CAUSE OF ACTION
COUNT ONE

1. Plaintiff Salvatore Moretti residing at 390 Park Street, Hackensack, New Jersey is a property owner of property consisting of Block 418, Lots 22 and 23 (Park Court Apartments, 391-397 Park street, Hackensack, New Jersey); Block 418, Lot 24, (vacant land zoned R-3B, 66 by 150 feet); and Block 415, Lot 8b (390 Park Street, single family house, 44 x 115 feet). The assessed value of Park Court Apartments is $766,800, with the assessed value of the other parcels equal to $266,300; the annual Hackensack real estate taxes are $24,897.71. 2. Plaintiff has owned the majority of this property since the 1950's, and has lived on site for over two decades. Plaintiff has pursued the real estate management profession seriously for several decades, up to the present time. 3. Services to the subject property have been reduced due to the preference to conduct health and police and fire alerts without just basis as opposed to providing normal community assistance. Tenants are mislead by the Hackensack Municipal Court (for example, unfounded health complaints requiring at least twenty court appearances), resulting in non-payers who maintain residence at the apartment house for in excess of six months. 4. The health department has caused at least six steel doors to be broken into at Park Court Apartments with the assistance of the police and/or the fire departments. Photographs of these doors were offered into evidence at the Hackensack Municipal Court. 5. The Hackensack police department has ripped down a bannister in the hallway of 397 I-J, broken through a steel door in Apartment 397-B, and sought plaintiff's assistance without a warrant to enter into apartments

397-B, 397-D, 397-F, 397-J, Basement of 397, 391-E, 391-G, 391-H, during the period from midnight to six a.m. in the morning. 6. The Hackensack fire department has conducted at least two hundred smoke alarm and fire alarm alerts in the immediate vicinity of Park Court Apartments. Approximately, one hundred and forty alerts have occurred at 370 Park Street, Hackensack. That building was constructed im 1980 contains seventy-two units, but has been forced into receivership and has gone through two mortgage recastings in three years. Other alarts have occurred at Park Court Apartments, including alerts at 3:00 a.m. in the morning. When plaintiff inquired as to why such alerts were occurring with such alarming frequency a firemen with a yellow raincoat, fire helmet, and additional gear assaulted him in the cellar of building 397 Park Street, Hackensack.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT of each of the causes of action within this count and seeks damages in the amount of $10,000 against the Health Department, the Police Department, and the Fire Department, and the City Council.

COUNT TWO

7. Plaintiff repeats the allegations of each and every paragraph of the first count as if set forth herein and at length.

8. Plaintiff has appreared before the Hackensack City Council and described the events occurring in the first count of this complaint, without avail. Plumbing back-ups occurred with alarming frequency due to excessive debris collecting in the combined storm sewers and building septic system. Not only does this provide excessive costs as far as processing of waste water paid by the city, but the moratorium on building permits with sewer hook ups has reduced the value

of Block 418, lot 24 on the Hackensack Block and Lot map (66 feet by 150 feet) assessed at $130,000.

9. When plaintiff addressed the various municipal officials in charge of the Department of Community Affairs, the only relief envisioned was that in several years the sewer moratorium might lift. Dry hook-ups were recommended, but such construction is rejected by banks. Nevertheless, the city continues to collect money from vacant land for operation of the municipal budget and the school budget. The 1991-1992 school budget alone is $41,813,481, 65% coming from municipal taxes.

10. Plaintiff maintains that the repeated acts of defendants have conspired to deprive him of his ownership rights. Taken collectively the acts of defendants have conspired to take the subject property without just compensation. More particularly, the defendants have conspired to fix the assessed value far in excess of the actual value due to the numerous problems on site. Not only property rights are involved but civil rights as well, since the subject property requires excessive numbers of hours to operate, and defendants have fixed the operating costs of the property at many times the gross income. The New Jersey Department of Community Affairs has established the standard that twelve hours per week are required for a twenty-unit apartment house. In the present case, twelve hours per day have been required for six years. The City Council in particular is cognizant of the selection of personnel for its administrative units and sets the policy of the city. The acts described within this complaint set forth a collusion in which the defendant City Council has allowed parking to occur on Block 418, Lot 24 by the Defendant Gutterman-Muisicant Inc. believing that such a use of property is of an emerg-

ency nature. Notification of the city manager is useless. Notification of the police is equally useless.
WHEREFORE, PLAINTIFF DEMANDS JUDGEMENT in the amo
of $10,000 on the causes of action in this count against the Defendant Hackensack City Council.

COUNT THREE

11. Plaintiff repeats the allegaotions of each and every paragraph of the first two counts of the complaint as if set forth herein and at length.
12. On August 6, 1992, Plaintiff filed his complaint Salvatore Moretti vs. G. Thomas Gentile, Gutterman-Musicant Funeral Parlor, and the Board of Adjustment of the City of Hackensack, Docket No. BER-L-09278-92 - Action In Lieu of Prerogative Writs. The variance sought by Gentile on July 15, 1992 was to provide parking within five feet from the adjoining lines in a residential district, to provide 53 of the required 87 on-site parking spaces, and thirdly "for such other variances as the Zoning Board may determine are necessary at said public hearing." The premises are known as 397 Union Street B 415 L 8d, 13/& 15A located in the B-1 Neighborhood Bus. & R-3B Med. Density Mult. Fam. Zone. The notice reads as follows: THIS NOTICE is sent to you as owner of property in the immediate vicinity. A Public Hearing has been order for Wednesday, July 15, 1992 (sic) P.M. or thereafter, in the City Hall, 65 Central Avenue, Hackensack, N.J. and when this case is called, you may appear either in person or by agent or attorney, and present any objections which you may have to the granting of this Application. All documents relating to the application can be inspected in the office of the Department of Community Affairs in the Municipal Complex between the hours of 9 a.m. and 3 p.m. Monday through Friday. This Notice is sent to you in accordance with the State Statutes

and as required by Ordinances No. 1-77 and 2-77 of the City of Hackensack. (s) G. Thomas Gentile. Hearing to be conducted by: Zoning Board. Attorney for Applicants: Zisa & Hitshcherich, 77 Hudson Street, Hackensack, New Jersey 07601.

13. G. Thomas Gentile sought variance approval for property commonly known as 397 Union Street, Hackensack. Gentile applied to the Defendant Hackensack Board of Adjustment for various variations from the zoning code by Variance Application No. 31-92 and Site Plan Application No. 5-92 with the hearing thereon conducted on July 15, 1992. At that hearing, Gentile appeared without testimony of a planner, without the testimony of a real estate broker licensed in the State of New Jersey, without the testimony of a real estate appraiser, without the testimony of an architect, and without anyone who favored the variance excepting himself. Plaintiff addressed the Board of Adjustment advising it of the negative criteria which had to be overcome for re-zoning from R-3B medium density mutli-family and business office to parking lot for a funeral parlor. Plaintiff advised the Board as to the cost of residential properties on Park Street. Plaintiff was familiar with the Defendant Gutterman-Musicant Inc. which operated a halfway house for mental patients at 387 Park Street, and with "Project Advance," similar to the Friendship House halfway house operation located near the Gormley-Gentile Funeral Parlor at 335 Union Street, Hackensack. Martin Gormley leased the property to Project Advance.

14. G. Thomas Gentile received a zoning variance from the Hackensack Board of Adjustment to open up a funeral parlor which has been closed for over four years and was inactive prior thereto for ten years. Plaintiff inquired at the hearing whether zoned for uses

were investigated by Gentile and he stated that they were not. Gentile also stated that he had not attempted to located his parking lot in the B-1 commercial zone in which he is located.

15. The defendant board failed to even discuss the negative criteria for grant of a type d-use variance. A bulk variance was also granted, with defendant Gentile allowed to re-zone 12,000 square feet of land from R-3B use district land to B-1 business-funeral use. This land is adjacent to plaintiff's house at 390 Park Street. In addition, Gentile was allowed to rebuild the former funeral parlor - previously closed - and with the improvements to re-open under a new name and appearance. No setbacks were required. Plaintiff was not allowed to set forth an opposing viewpoint at the hearing, and the defendant Board merely suggested that if Gutterman-Musicant Inc. illegally parked its cars on Block 418, Lot 24 (under plaintiff's ownership), then no consideration to objections would be heard.

16. Martin Gormley, upon being discovered operating a psychiatric halfway house at 316 Union Street, Hackensack, was required to file Zoning Board Application No. 7-76. The Hackensack Hospital Association appeared at that hearing and stated that it operated under a boarding house license by the name,"Project Advance." The application for a variance contains the following language: "Specialized rooming house to be used by Project Advance of the Hackensack Hospital as supervised living for its clients. The building inspector has determined that this requires a variance. The applicant appeals from the building inspector's decision under N.J.S.A. 40:55-39(a) contending the use is permitted in this zone or in the alternative seeks a variance to permit such use without

it constituting an abandonment of the existing rooming house use." Plaintiff contends that collapsing neighborhoods by introducing zoning violations under guise of improving health is costly. The indigenous population must suffer many years for the decision to undercut the zone plan. The injudicious grant of a variance can adversely affect neighboring businesses, and social life, and physical health. Variances are a business license which insures a monopoly status in that neighborhood. The gathering together of both the Gentile and Gutterman-Musicant funeral parlors will create a common use of each others facilities. The parking applied for now is on both sides of Park street, Gutterman-Musciant on the west side, Gentile on the east side. The impact on the legal rights of opponents of these businesses is clear for anyone located near by.

17. The combination of Gutterman-Musicant conducting funerals during the day and the housing of mental patients at night at 387 Park Street proved very vexing. Application No. 78-77 was filed on December 23, 1977 by plaintiff, and it appealed from Zoning Officer Lind's determination that 387 Park St, was merely a boarding house, and could be licensed as such. Applicant maintained that 387 Park st. was a half-way house for people with histories of mental illness, and had submitted proof of this...such an institutional use in an R-3B zone required variance approval from the Board of Adjustment, which had not been applied for... The Board was empowered to make the above determination based on N.J.S.A. 40:55D-70a and N.J.S.A. 40:55D-70b. The April 12, 1978 edition of the Hackensack Record featured an article headlining: Apartment Owners sue to close home for the mentally ill, by Edward Flynn. "Friednship House, the operator of a

residence for the mentally ill at 387 Park St., Hackensack, is being sued...In a suit filed yesterday in Superior Court, Hackensack, ...violated a city ordinance which prohibits the boarding of mentally deficient persons." On April 3, 1980, plaintiff appeared before the District Ethics Committee and testified that Hollis in fact fabricated that the complaints were served and a court trial date would be assigned, but in fact no court date ever was assigned and the cases were dismissed. The case was later refiled by substituted attorney under docket No. C-4640-78, A-03801-T01. The zoning board hearing on February 15, 1978, included this colloquy,

Hollis: Why don't you let the applicant answer that?

Mr. Carlos Peay - Zoning Board Attorney: ...Are you challenging Mr. Lind's issuing of the (boarding house) license, or are you challenging the fact that there is -an - institutional use, a psychiatric halfway house?

Mr. Moretti: I am challenging the fact that... no one advised me that there was an institutional use. ...no one informally stated to me, either from Gutterman-Musicant, Inc. or from the Friendship House, or from the City of Hackensack that there was an institutional use at 387 Park Street.....

Chairman Frank Longo: And I'd appreciate it if you'd go through your attorney (Robert Hollis)from now on...

Carlos Peay: I don't need the clarification...

Chairman Frank Longo: I think the answer, and now I'm speaking for the Board, is improper at this time. Mr. Peay asked you a question, you answered it, and I thank you...Mr. Hollis, do you have anything else?

Robert Hollis: Judge, ah Mr. Chairman, no I request about a two minute recess.

Stephen Moses: I take it then that the Board is grant-

ing my motion of dismissal based on lack of jurisdiction.
Chairman Longo: Yes. That's correct.
Robert Hollis: Off the record, I retract my offer of a judgeship.
As a result of the hearing plaintiff was required to file first a law division complaint against Gutterman-Musicant, Inc, and then a Chancery Division case. As a result of plaintiff's complaint filed a complaint with the disciplinary review board relating to Hollis who was suspended from the practice of law.
18. In fact, the award of the Gentile variance is nothing more than the grant of a local monopoly to Gentile. The indigenous population must suffer the long term negative consequences of such incompatible land uses as funeral parlor and apartment house. When preferential treatment is granted, as herein described, damages are evident and must be paid by those awarded the local monopolies which they applied for. In the case at bar, the defendant funeral parlors have parked throughout the neighborhood; they will make use of each others parking lots, plus park on private property, with no city ordinances to prevent them from doing so due to the "emergency" nature of their business. This is an adverse effect upon the health and social well being of neighborhood residents, which plaintiff was prepared to testify to if allowed to at the Board of Adjustment hearing.
19. Plaintiff has directed interrogatories to Gutterman-Musicant, Inc. to state what money was paid to them to park on the lot described as Block 418, lot 24. No answer was provided to the interrogatory seeking clarifying response.
WHEREFORE PLAINTIFF DEMANDS JUDGMENT on each of the causes of action of this count and seeks damages in

the amount of $90,000, against Gutterman-Musicant, Inc, G. Thomas Gentile, The Hackensack Board of Adjustment, and the City Council of Hackensack.

COUNT FOUR

20. Plaintiff repeats the allegations of each and every paragraph of the first three counts as if set forth herein and at length.

21. The Hackensack Water Company with the knowledge and permission of the Hackensack municipal government, turned off the water supplying Park Court Apartments on August 13, 1992 at 4 p.m., and left it off until August 14, 1992 at 3 p.m.. The Water Company turned the water off again on August 17, 1992 at 8 a.m. and left the water off until the evening. The water company demanded three payments of $2,950.00 within one months time, the last payment to be made on September 30, 1992.

22. Plaintiff maintained that shutting off the water would create a fire emergency, would create a public health threat, was contrary to the regulations of the Hackensack Health Department, would result in the constructive eviction of the residential tenants, that the shutting off of the water was in derogation of public health standards operating on public monopolies such as the Hackensack Water Company, that it would create a nuisance, that a complaint had been filed with the Superior Court Law Division(BER-L-8191-92) in Bergen County on June 26, 1992, attempting to resolve this controversy in good faith, that there was a genuine bill dispute, and that the law required the water to remain on.

23. On August 7, 1992, the Hon. James T. Murphy. J.S.C. simply refused to consider any oral argument advanced and signed the order (denying relief) supplied by the Hackensack Water Company. Despite the fact that

the plaintiff within detailed all of the relevant New Jersey Administrative Code provisions (such as N.J.A. C. 14:4-4.5(d) - unexplained increased consumption; N.J.A.C. 14:3-7.12A - termination of service to those on welfare; N.J.A.C. 14:3-7.13. Disputes as to bills; N.J.A.C. 14:3-7.13(c), Deferred payment agreements; N. J.A.C. Meter Replacement; N.J.A.C. 14:3-7.9 - form of bill for metered service, the water was shut off.
Judge Murphy was provided with numerous certified notices, letters, and telephone calls attempting to settle this billing account, Y-06-185-19050-1, service address at "391-5" Park Street, Hackensack. Bills of 819,060 gallons or 1,298,528 gallons occurred resulting in gargantuan bills of $3,900.99, and $2,470.72. The Water Company merely claimed they could not read the meter - no one was home. In fact there was an on-site management office open seven days a week on the premises. Thus, they "estimated" the bills, due to a non-functional "Homer" telephonic system, which bills were then inflated due to "wrong" estimates. "Water leaks" was the explanation of the "high" bills - the very high bills. Tenants maintained they used twenty-five gallons of water per day, the water company maintained that for three years each and every apartment had used over two hundred gallons of water per day. The "High" bills were for over five hundred gallons of water per day, impossible for one toilet, two sink apartments with no industrial or commercial uses attached.

24. On August 18, 1992 the Hackensack Health Department and complainant Patricia Farlie signed a complaint against Plaintiff alleging that "within the jurisdiction of this (municipal) court fail(ed) to supply a plentiful supply of pure water suitable for domestic and personal use to all tenants and fail(ed)

to supply hot water to apartment(s) located at 391 Park St. after notice had been given by the City of Hackensack contrary to sections 114 Ordinance 51-78 Section 114-2 (10) Ordinance 24-81 Section 98-3." Summons Number S426599. Two warrants were issues as well, dated August 12, 1992 (W337637, and August 14, 1992 (W337641), advising any "peace officer or other authorized person: Pursuant to this warrant, you are hereby commanded to arrest the named defendant and bring (him)(her) forthwith before this court to answer the foregoing complaint." The two warrants related to the shut off of water by the defendant Hackensack Water Company herein described.

25. Plaintiff appeared before Judge Patrick F. X. Fitzpatrick on August 17, 1992 on a remand from the Appellate Division. Advised to proceed into the hall-way to speak to the attorney for the Hackensack Water Company, John Wallace, plaintiff was placed under arrest and then taken to the Hackensack Municipal Court where Judge Louis Dinice placed him in the Bergen County Jail alleging that he had failed to provide an adequate supply of water to Park Court Apartments. The judge stated that he had been notified that if he failed to settle his account with the water company and they turned off the water that he would be fined $500 per day. This act on behalf of the Hackensack City Council produced great emotional upheaval and in fact the judge had placed a $10,000 bail on each of the two warrants in the case, with no 10%. The judge then according to the public prosecutor used such bail moneys as were paid to pay off the water bill. The City of Hackensack uses the Hackensack Water Company to do it's water searches, and hence this represents a conflict of interest.

26. Plaintiff contends that the acts of the city judge

were malicious and were meant to produce loss of business and great humiliation, and were supported by the City Council of Hackensack. Malicious acts are not immune under the New Jersey Tort Claims Act. Acts immune under the Tort Claims Act are actionable torts under the Federal Civil Rights Laws, more particularly U.S.C.A. 42 U.S.C.A. Section 1983. The acts described within produce an enduring interference with social life and is an important element of the business harrassment described within.

27. The Hacklensack Police Department was involved in the arrest, and this arrested was illegal. The warrants were not valid, since there was no probable cause for their issuance.

30. Plaintiff hereby demands damages for the issuance of warrants, and their execution by the Hackensack Police Department, with the consequent extreme emotional price paid during this ordeal. The prior five years of writing to the Hackensack Water Company, establishing a mangement office on site, and operating a leashold business were wiped away by the malicious actions of the Hackensack Health Department, and Patricia Farlie, et al. Plaintiff hereby demand $25,000 for interference with business relationships caused by the within described acts, against the Hackensack Water Company, The Hackensack Health Department, Patricia Farlie of the Hackensack Health Department, the Hackensack Police Department, and the Hackensack City Council.

COUNT FIVE

31. Plaintiff repeats the allegations of each and every paragraph of the first four counts as if set forth herein and at length.

32. As a result of the harrassment and the interference with the civil rights of the plaintiff by the

defendants named herein, and as a result of the interference with the civil rights of the lessees of plaintiffs whose contractual obligations require income to pay there leasehold agreed to rents, plaintiff has been required to expend great amounts of money for increased insurance, for legal services to determine what the rights and obligations are of lessors and lessees under the diverse welfare and other money grants used to pay lessees rents, and for the office expenditures directly caused by the sharp business tactics described within the body of this complaint. Services to the subject property have been reduced due to the harassment on site to workers and employees and tenants. Bad tenants are coddled by the Hackensack Municipal Court, the Health Department, and resulting in non-payers who maintain residence at the apartment house for as long as one year. Delays result due to excessive legal maneuvers. The prior fifteen years of appearances at council meetings, zoning board meetings, homeowners meetings, before the City Council of of Hackensack, and before its various Boards, have been tarnished. The establishing a mangement office on site, and operating a leashold business has been nullified by the malicious actions of the Hackensack Health Department, Patricia Farlie, and others, and to the harrassment herein detailed.

33. Plaintiff hereby demands judgment and damages for the loss of civil rights guaranteed under 42 U.S. C. Section 1983, due to the conspiracy which has parades has justice described within. Plaintiff hereby demands judgment in the amount of $25,000. Plaintiff demands judgement due to malicious abuse of legal process. Plaintiff hereby demand these damages for interference with business relationships caused by the within described acts against the Hasckensack Police Depart-

ment, the Hackensack Health Department, the Hackensack Fire Department, and the Hackensack City Council.

COUNT SIX

34. Plaintiff repeats each and every allegation of the first five counts of this complaint herein as if set forth in full.

35. The fourth amendment to the constitution specifically requires that "no Warrants shall issue but upon probable cause. A search warrant issued by a magistrate is constitutionally defective. In the case at bar, numerous search warrants were issued which did not specify what evidence was sought nor what criminal activity was in progress, expressly required by N. J. R. Crim. P. 3:5-3(b). The basement area was searched, but nothing was found as described in the transcript supplied herewith. Doors were broken down under the guise of administrative searches, but no recommpense was made to pay for damages, as in Apartment 397-B Park Street, Hackensack. The rent paying ability of lessees depends on safety and security from illegal invasions. The relevant state court authorities have failed to provide a safe neighborhood, resulting in an investigatorial state harrassment, as described within.

36. Henry J. Amoroso, Prosecutor of Hackensack, is prosecuting a water shut off case in which the municipal court is supplanting ownership of the property. Threats to confiscate rent checks, have rent paid into court, and force foreclosure have replaced allowed judicial conduct. Disguised as immune conduct, this conduct is malicious and hendce qualified immunity is lost. City inspectors stood along the work crew from the Hackensack water company when the water was first shut off, and failed to take action.

37. Repeated prosecutorial misconduct has taken the

form of preventing access to the property of prospective tenants, preventing tenants from earning a livelihood, and failing to extend equal protection of the laws to the plaintiff within. Discriminatory application of the law, as in Yick Wo. vs. Hopkins, 118 U.S. 356 (1886), is apparent, where one group is given variances, and another group fails to receive them. In the extreme, facially duly constituted authority is in fact causally related to crime and maintenance code violations so forcefully prosecuted within.

38. Plaintiff hereby demands judgment and damages on this count of $3,500.

DEMAND

1. WHEREFORE PLAINTIFF DEMANDS, IN ADDITION TO TRIAL BY JURY ON ALL FACT ISSUES AND AWARD OF DAMAGES ON COUNTS ONE THROUGH SIX, THE PLAINTFF DEMAND: Injunctive relief prohibiting the Hackensack Water Company from discontinuing water service to Park Court Apartments.

2. Production of the Affidavits supporting the warrants issues on the subject real property, 390, 391, 397 Park Street, Hackensack, New Jersey.

3. Production of the Transcript of the Hearing conducted by the Hackensack Board of Adjustment to determine what the board based its determinations upon.

4. Determination of the Federal constitutional violations to plaintiff's rights described within the body of the complaint.

5. Such other relief as may be deemed appropriate.

Dated: October 5, 1992

Salvatore J. Moretti

U.S. Supreme Court, Oct. Term, 1993,
Moretti v. Zisa, et al., Petitioner's Appendix, Case No._____.

THE CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE THE CONSTITUTION

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly, describing the place to be searched, and the persons or things to be seized.

Seventh Amendment to the United States Constitution.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Fourteenth Amendement to the U. S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiciton thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiciton the equal protection of the laws.

UNITED STATES STATUTES

42 USC Section 1981

(a) Statement of equal rights

All persons within the jurisdicition of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (c) Protection against impairment The rights protected by this section are protected against impairment by nongovernmental discriminartion and impairment under color of State law.

42 U.S.C. Section 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white xitizens thereof to inherit, purchase, **lease**, sell, hold, and convey real and personal proterty. (emphasis added)

42 USC Section 1983. Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 USC Section 1343(3) - in relevant part: The district court shall have original jurisdiciton of any

civil action authorized by law to be commenced by any person:...(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 USC Section 1985 (3) Conspiracy. Obstructing justice; intimidating party, witness, or juror (2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or wintess in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

STATES STATUTES
Summary Dispossess Statute - Residential Tenants

N. J. Stat. Ann. 2A:18-61.1 Removal of residential tenants; grounds No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant...(a) The person fails to pay rent due and owing under the lease whether the same be oral or written;

Habitability

A residential lease in New Jersey carries with it an implied warranty of habitability. Marini v. Ireland, 265 A 2d 526, 56 N.J. 130. The convenant on the part of a tenant to pay rent and the covenant on the part of a landlord to maintain the demised premises in a habitable condition are for all purposes mutally dependent.

N.J. Stat. Ann. 48-19-15.1. Condemnation

Every water utility desiring to take, use or occupy any lands or to take or divert any spring or stream of water necessary for the rendition of its public utility service may exercise the power of eminent domain as provided in section 48 and 49 hereof to acquire such lands, right and perivileges.

N.J. Stat. Ann. 48:19-18 Sale of water; rates

Each water company organized under the laws of this State may sell and dispose of the water issuing from its reservoirs, aqueducts or pipes for such rates and pursuant to such terms and conditions as are in accordance with its approved tariffs on file with the

Board of Public Utilites.

N.J. Stat. Ann. 48:19-18.1 Statement of amount of water sold in gallons on bill
Any bill or other statment presented by a person, firm, association, corporation, authority or governmental unit to a customer for water sold or supplied shall have the amount of water sold or supplied stated thereon in gallons or shall indicate thereon that 100 cubic feet of water equals 748 gallons.

NEW JERSEY ADMINISTRATIVE CODE
1. N.J.A.C. 14:3-7.12. Notice of Discontinuance
2. N.J.A.C. 14:3-7.12A provides for the termination of utility services to those on welfare. While it refers to termination of gas and electric (heating) during the winter, since the summons and conmplaint refers to heated hot water, and since heating is through hot water, and since infants and welfare recipients reside at the subject apartment house, 391-397 Park Street, Hackensack, this code provision should be enforced. This code provision provides that gas and electric cannot be discontinued during the "heating season" "to those residential customers who demonstrate at the time of the intended termination that they are: - Recipient of Federal Aid to Families with Dependent Children (AFDC) - Recipients of Pharmaceutical Assistnace to the Ages and Disabled (PAAD) - Recipients of general welfare assistnace benefits; or - Persons unable to pay their utility bills because of circumstances beyond their control. Such circumstances shall include but not be limited to unemployment, illness, medically related expenses, recent death of a spouse and any other circumstnaces which might cuase financial hardship.

3. N.J.A.C. 14:3-7.13. Disputes as to Bills.
Note: Three year total consumption at subject premises was 5,873,296 gallons, for a total dollar amount of $17,024.17.
4. N.J.A.C. 14:3-7.13 provides that (a) A utility shall not discontinue service because of non = payment of bills in cases where a charge is in dispute, provided that the undisputed charges are paid, and a request is made to the Board for an invesitgation of the disputed charge...Once a formal or informal dispute is before the Board, all collection activity on the charge is dispute shall cease.
5. N.J.A.C. 14:3-7.13. Deferred Payment Agreements.
Whenever a residential customer advises the utility prior to the date of the proposed discontinuance for nonpayment that he wishes to discuss a deferred payment agreement because he is presently unable to pay a total outstanding bill, the utility shall make a good faith effort to privide the customer with the opportunity to enter into (a) reasonable deferred payment agreement(s).
6. N.J.A.C. 14:3-7.14. Discontinuance of Residential Service to Tenants.
The administrative code requires here that the utility notify tenants of the shut off so that they can accept billing in lieu of the landlord making payments. Electric, gas, water and sewer pugblic utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at residential premises being serviced. If such a relationship is known to exist, discontinuance of residential service is prohibited unless the utility has posted notice of discontinuance in the common areas of multiple family premises and has fiven individual notice to occupants of single and two-family dwsellings and has offered

the tenants continues service to be billed to the tenants unless the utility demonstrates that such billing is not feasible. The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person.

7. N.J.A.C. 14:3-4.10. Meter Replacement

(b) A meter of a customer who has a complaint filed with the Board reflecting on the accuracy or perfomance of the meter shall not be removed from service by the utility during the pendency of said complaint or during the following 30 days unless otherwise authorized or directed by the Board.

RESOLUTION 260. Enacted August 17, 1992 by the City of Hackensack states in full, as follows:

WHEREAS N.J.S.A. 26:3-45, et seq. and N.J.S.A. 40:48-2.12, et. seq. authorize municipalities to regulate the use and occupation of buildings and structures so as to prevent and abate conditions therein which are harmful to the health and safety of the occupants of said buildings and structures and the general public in the municipality; and

WHEREAS Section 114-2B(10) of "The Code of the City of Hackensack, New Jersey" declares that allowing a tenement house, or a dwelling house, to be occupied without a plentiful supply of pure water is a nuisance; and

WHEREAS the premises known as Lot 22, Block 418, commonly known as 391-397 Park Street, in the City of Hackensack, is a multiple dwelling containing approximatelly twenty (20) living units, most or all occupied by residents; and

WHEREAS, according to the tax records of the City of Hackensack, said propertry is owned by one Salvatore

Moretti of 390 Park Street, Hackensack, New Jersey, and

WHEREAS, the Health Officer of the City of Hackensack has advised the Mayor and Council of the City of Hackensack as follows:

1. Water service to the aforementioned property is provided by the Hackensack Water Company.
2. The Hackensack Water Company Account Number for the subject property is: Y 0618519050-1.
3. The present balance due on the subject account is $9,329.62, according to representatives of the Hackensack Water Company.
4. Despite repeated requests by the Hackensack Water Company the owner of the property has refused or otherwise failed to pay the water bill.
5. Between approximately August 10th and August 17th, 1992, the Hackensack Water Company, pursuant to its procedures, caused the water service to the subject property to be turned off. Service was only temporarily reinstated due to the intercession of the Health Officer of the City of Hackensack and the humanitarianism of the Hackensack Water Company directed to the residents of the property.
6. The Hackensack Water Company, as of the morning of August 17th, 1992, has, again, turned off the water supply to the property due to the non-payment of the bill; and

WHEREAS, the Health Officer of the City of Hackensack has advised that the lack of a supply of water to the residents of the subject property clearly constitutes a condition harmful to the health and safety of the occupants of the subject property and would further be harmful to the health and safety of the general public of the City of Hackensack; and

WHEREAS, N.J.S.A. 40:48-2.12f authorizes municipali-

ties to abate nuisances, correct a defect, or put premises in proper condition at the cost of the property owner so as to comply with applicable ordinances and laws; and to expend public monies for same; and charge such expenditures against the premises; and create a lien against the premises;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hackensack, as follows:

1. The shutting off of the water supply by the Hackensack Water Company to the premises known as Lot 22, Block 418, commonly known as 391-397 Park Street, Hackensack, New Jersey, due to the non-payment of the balance due on Account Y 0618519050-1, and the resulting lack of the provision of supply of pure water to the residents therein be and hereby is declared to be a nuisance posing a clear and present threat to the health and safety of the residents therein and the community-at-large; and 2. The appropriate City officials be and hereby are, authorized to take all necessary steps and actions to re-establish a supply of water to the residents of the subject premises. Such steps shall include, but not be limited to, the payment of the past due balance to the Hackensack Water Company of $9,329.62 and/or arrangements made between the City of Hackensack and the Hackensack Water Company for the guarantee of payments for future water use at the subject property on and after August 17th, 1992; and

3. If such payment or any part thereof shall be made by the City of Hackensack, it shall be deemed to constitute a lien on the property. Proof of such payment, as well as a certified copy of this Resolution, shall be presented to the Tax Collector of the City of Hackensack, who shall then cause such amount to be entered as a lien on the property according to law.

Court Rules
Rules of Professional Conduct
RPC 1.11. Successive government and Private Employment
(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter (1)in which the lawyer participated personally and substantially as a public officer or employee, (2) about which the lawyer **acquired knowledge of confidential information as a public officer or employee**, or (3) for which the lawyer has substantial responsibility as a public officer or employee.
New Jersey Court Rule 1:15. Limitation on Practice of Attorneys
Subsection a.) Rule 1:15-1: Full Time Judges
An attorney who is a judge required by law to devote his full time to his judicial duties shall not practice law. Subsection b.) Rule 1:15-1: Judges of Municipal Courts. An attorney who is a judge or acting judge of a municipal court shall not practice in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature, except to perform the official duties of a municipal attorney of another municipality. Nor shall he act as attorney for the municipality or any of the municipalities where he is serving.

U.S. Supreme Court, Oct. Term, 1993,
Moretti v. Zisa, et al., Petitioner's Appendix, Case No._____-
Answer and Counterclaim Filed by Gentile,
Delivered with Motion for Sanctions and
Dismissal on Nov. 3, 1992

Zisa & Hitscherich
77 Hudson Street
Hackensack, N.J. 07601
Attorney for Defendant

Salvatore Moretti, Plaintiff	:	FEDERAL DISTRICT COURT
vs.	:	DISTRICT OF NEW JERSEY
Mayor John Zisa and the Hackensack City Council; George Diana and the Hackensack Board of Adjustment; Patricia Farlie and the Hackensack Health Department; Richard Carucci and the Hackensack Fire Department; C. Morrissey and the Hackensack Police Department; Henry Amoroso - Hackensack Prosecutor; Hackensack Water Co., G. Thomas Gentile; and Gutterman-Musicant Inc., Defendants	:	CASE NO 92-4206 (HAA)
	:	ANSWER AND COUNTERCLAIM

Defendant, G. Thomas Gentile, (hereinafter "Defendants") answer Plaintiffs (sic) complaint on file herein as follows:

ANSWER TO COUNT ONE

1. Defendant has no knowledge or information sufficient to form a belief regarding the truth of the

allegations contained in Paragraph 1 of Count One of Plaintiffs (sic) Complaint.
2. Defendant has no knowledge or information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 2 of Count One of Plaintiffs (sic) Complaint.

.....
Zisa & Hitscherich
77 Hudson Street
Hackensack, N.J. 07601
Attorney for Defendant

Salvatore Moretti, Plaintiff vs. Mayor John Zisa and the Hackensack City Council; George Diana and the Hackensack Board of Adjustment; Patricia Farlie and the Hackensack Health Department; Richard Carucci and the Hackensack Fire Department; C. Morrissey and the Hackensack Police Department; Henry Amoroso - Hackensack Prosecutor; Hackensack Water Co., G. Thomas Gentile; and Gutterman-Musicant Inc., Defendants	FEDERAL DISTRICT COURT DISTRICT OF NEW JERSEY CASE NO 92-4206 (HAA) NOTICE OF MOTION FOR SANCTIONS PURSUANT TO F.R.C.P. 11 AND DISMISSAL PURSUANT TO F.R.C.P. RULE 12 (b)

TO: Salvatore Moretti
390 Park Street
Hackensack, New Jersey 07601

PLEASE TAKE NOTICE that, upon the attached Affidavit of Hoseph C. Zisa, Jr., and accompanying letter brief, Defendant G. Thomas Gentile will move the Court before the Honorable Harold A. Ackerman, United States District Judge, in the United States Court House in Newark, New Jersey, on December 12, 1992, at 10:00 a.m. or as soon thereafter as counsel may be heard, for an Order imposing sanctions on Plaintiff in the amount of Defendant's costs and attorneys fees in this action purusant to Federal Rule of Civil Procedure 11, as well as an Order dismissing Plaintiff's Complaint in its entirety as it relates to Defendant G. Thomas Gentile, pursuant to Federal Rule of Civil Procedure 12(b).

ZISA AND HITSCHERISCH
Attorney for Plaintiff

By: _____
Joseph C. Zisa, Jr.

Dated: 11/3/92

U.S. Supreme Court, Oct. Term, 1993,
Moretti v. Zisa, et al., Petitioner's Appendix, Case No._____-
Reply to Answer and Counterclaim Filed by Gentile,
Delivered with Motion for Sanctions and Dismissal
dated Dec. 10, 1992

SALVATORE MORETTI
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414
PLAINTIFF PRO SE

SALVATORE MORETTI, Plaintiff	U. S. DISTRICT COURT :
vs.	:DISTRICT OF N.J. : :Case No.92-4206 :(HAA)
MAYOR JOHN ZISA AND THE HACKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSACK BOARD OF ADJUSTMENT; PATRICIA FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO - HACKENSACK PROSECUTOR; HACKENSACK WATER CO., G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT INC., Defendants	:REPLY TO ANSWER BY :DEFENDANT G. :THOMAS GENTILE : : :ANSWER BY JOSEPH :ZISA, ESQ., ON :BEHALF OF G. :THOMAS GENTILE :REPLY TO MOTION :TO DIMSMISS, ETC. :UNDER RULE 11 & :12(b) BY GENTILE RULE 56.

The plaintiff, Salvatore Moretti, received a document purporting to be an ANSWER to the COMPLAINT in the above captioned matter, filed by Joseph C. Zisa Jr. Esq., on behalf of Applicant G. Thomas

Gentile, and Josephine Gentile, said property construction and rezoning located at 397 Union Street, Hackensack, New Jersey (Pa51, Pa1 - Notice of Variance, Pa4-3, Pa-31 - Mortgage, Pa 35-36 - Deed.) The subject property is zoned B-1 and R-3B (Pa 63-64), located in a B-1 strip zone along Passaic Street between State Street and Park Streets on the East and West, and between Passaic Street and Berry Street on the North and South. The zoning variance decision was published in the Record newspaper on July 20, 1992 (Pa65). Plaintiff filed in the Superior Court of Bergen County, Law Division, an Reply to Answer & Motion to Dismiss (Summary Judgement) Action in Lieu of Prerogative Writs on August 5, 1992(Pa66). On October 6, 1992, Plaintiff filed another Complaint against G. Thomas Gentile, the Hackensack Board of Adjustment, Gutterman-Musicant, Inc., (Count Three) and others - in the U. S. District Court. The Prerogative Writ action was served by plaintiff on August 7, 1992 (Pa76). The prerogative writ action was answered by the Board of Adjustment of Hackensack on August 26, 1992 (Pa77); it was answered on behalf of Gentile on August 20 (Pa82). All three defendants were served interrogatories: Gentile on September 3, 1992 (Pa113-121 for the prerogative writ case), on November 12, 1992 for the U. S. District Court Case (Pa122-133); Board of Adjustment on September 3, 1992 (Pa134-143); Gutterman-Musicant on September 3, 1992 (Pa144-151). Only the Board of Adjustment answered even one interrogatory (Pa152-159). In their answer, they stated that questions 2, 7, 8, 10, 12, 13, and 14 were improper(Pa152). To question 15, no answer was supplied whatever. Question 2 asks whether the Board considered the negative impact of allowing a funeral parlor to function in an R-3B use district along Park Street. Question

14 asks the Board whether they considered a lawsuit filed against Gutterman-Musicant funeral parlor as creating traffic and other nuisances in the residential neighborhood. Clearly, questions two and fourteen were necessary to answer. In its answer, the Board defends its decision by citing a long resolution (Pa154-159). That resolution states that the applicant admits that there were only three funerals in the prior year(Pa15-15,Pa156-7a).Despite that,applicant paid $875,000 for the property on June 23, 1992 (DB7526,P570,Pa35), and entered into a construction loan for $100,000 to renovate the property (Pa51, Bk8224,Pg932). This purchase was before the zoning board hearing scheduled for July 15, 1992 (pa1), and in contrast to the fact that in the B-1 zoning, (Pa63-64), the purchased property did not have sufficient land in the B-1 zone, necessitating the variance applied for.

Subsequent to plaintiff's filing of the above noted complaints, the Gutterman-Musicant funeral parlor applied for a removal of its defendant status, allegedly granted under the Pre-Trial Order in Superior Court - Law Division. (Pa174-6), In contrast to plaintiff's allegations that the problems complained of were very much "prerogative writ actions" (Pa177-178) and blighted the neighborhood, Gutterman-Musicant claimed they were improperly joined (Pa183). Hon. Isabel Brawer Stark signed an order on December 4, 1992 denying "joinder(?)" denying a jury trial, and apparently not even considering the fact that the defendants Gutterman-Musicant and Gentile had not bothered to answer interrogatories served September 3, 1992, but expected that a meaningful "brief" couly be submitted by plaintiff by December 10, 1992 (Pa174-11), while defendants were given until December 29, 1992 (Board of Adjustment), and January 4, 1992

(Gentile)(Pa174-11) to submit THEIR briefs. Why not have all briefs submitted at the same time?

Defendant Gentile filed a Notice of Motion in the United States District Court returnable on December 12, 1992 (Saturday morning). In fact, Saturday, December 12, 1992, was! not a motion day, as plaintiff noted:(Pa194)"I trust this matter can be listed for oral argument on (December 14,1992) - a motion day." In plaintiff's reply dated November 14, 1992, he stated that the motion made under Rules 11 and 12(B) was inherently misleading, since buried in the answer to the complaint, on page 9, Gentile claims as an affirmative defense No. I. "Plaintiffs (sic) Complaint fails to state a claim upon which relief can be granted. No. IV. This Court does not have jurisdiction over the subject matter of this lawsuit and the answering party reserves the right to move to dismiss due to lack of jurisdiction over the subject matter (Pa215-IV). In a misleading fashion, the motion is made under Rules 11 and 12(B) (Pa216), Rule 11 merely requiring an elementary understanding of the facts of the case. In discussing why Rule 11 applies, the lawyer for Gentile launches into rhetoric clearly scandalous, claiming he is sued by a "disgruntled" scatter-shot man who is causing a waste of presumably valuable (his own) legal resources." By contrast, Gentile is painted in glowing terms, "There is absolutely nothing at all that Mr. Gentile has done wrong(Pa226)." Failure to state a claim under 12(B) is given passing notice-jurisdiction results by "merely asserting a frivolous conection between the subject matter of the dispute and the Constitution (Pa222). Gentile "merely applied for a variance (Pa226)." Plaintiff's reply is that Rule 11 cannot possibly apply, since plaintiff is an expert in the immediate area, has been a prop-

erty manager for many years(Pa138), and has even contested the operation of funeral parlors in these areas in the Superior Court Law Division (Pa139, Pa140,Pa141). Plaintiff inquires of Gutterman-Musicant whether locational obsolescence will be visited upon land uses proximate to a funeral parlor - and receives no answer (Pa147). Has this funeral parlor parked on Block 418, Lot 24, plaintiff's property (Pa147-15)? No answer.

On July 15, 1992, Ms. Gorgano states about Block 418, Lot 24, a vacant lot owned by plaintiff, "you are losing me totally (Pa22-12). On lot 24, is that a parking lot, is that blacktop on lot 24, just answer me. Is it blacktop? Plaintiff replied: "It's vacant (Pa22-15)". Ms. Gorgano ignores the response and contradicts the answer stating just the opposite - "I am assuming you are (lieing) - using that as a parking lot. I am assuming you are (lieing) trying to avoid being very ambiguous because I have a feeling that is a parking lot for your other residents and for some reason (a liar-?), you don't want to (be honest)own up to that. This is what I assume...Now wait a minute. Stop there,I don't want to hear another word..."In fact, defendant Gutterman-Musicant could have answered interrogatories and merely replied that it parked there illegally - without permission from the plaintiff. This is a typical PROBLEM of funerals. Being located next to such businesses is why plaintiff is knowledgeable. Instead of "owning up" to the variance being applied for,the questioner merely turns the variance around and states that it is the plaintiff who parks on the site, even though that is not permitted since it is not paved (paving is required for use as a parking lot, according to the Hackensack Code). When plaintiff tried to respond to questions,

he was interrupted abruptly by the Chairman of the Board, "Get to your point, It is late in the hour and we would like to hear your objection and I want to give you all the time to talk, but you have talked about 40 minutes now, and please...let us go on(Pa24-22)." "Forty minutes" is alleged, but plaintiff began to speak on page 11,and when the Chairman interrupted with a speach about 40 minutes, "it late lets go", is at page 22, line 1, only 11 pages later. In those eleven pages, there were 42 interruptions of testimony by the Board of Adjustment members, averaging four per page. Despite the statement on page 22 that the Chairman of the Board wants to hear plaintiff's objections "Please let me hear your objections and let us go on. Thank you (Pa22-2)", after only one question, the chairman calls a halt to the objections, stating definitively, "You got another three minutes and the party is over. Get to your point (Pa25-1)." Plaintiff, clearly badgered,by this point by every member of the Board, states clearly "I don't intend to be badgered. I will step away from the microphone (Pa25-3). Plaintiff, demanding that the badgering stop, stepped away from the microphone, states simply "I am not going to continue, (Pa25-8)", He then does continue, but on the basis that he will not proceed if there are undue interruptions(Pa25-15)." Within six lines of testimony, Ms. Izzo interrupts, stating that the plaintiff is being overly hypotheitcal (Pa25-20). When plaintiff attempts to explain, Ms. Izzo interrupts plaintiff again, "I am not sure where you're leading. Answer: Professional office uses in an R-3B buinsess district (transcript reads phonetically, A-3 "B" usiness district).....

U.S. Supreme Court, Oct. Term, 1993,
Moretti v. Zisa, et al., Petitioner's Appendix, Case No._____-
Reply to Answer Filed by Gutterman Musicant Funeral Directors, sued as Gutterman-Musicant, Inc., repres. by Greenberg dated Nov. 29,'92

SALVATORE MORETTI
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414
PLAINTIFF PRO SE

SALVATORE MORETTI, Plaintiff	U.S. DISTRICT COURT
vs.	DISTRICT OF N.J.
MAYOR JOHN ZISA AND THE HACKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSACK BOARD OF ADJUSTMENT; PATRICIA FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO - HACKENSACK PROSECUTOR; HACKENSACK WATER CO., G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT INC., Defendants	Case No 92-4206 REPLY TO ANSWER BY GUTTERMAN-MUSICANT, AKA GUTTERMAN-MUSICANT FUNERAL DIR.. ANSWER BY STEVEN GREENBERG, ESQ.ON BEHALF OF GUTTERMAN-MUSICANT

The plaintiff, Salvatore Moretti, received a document purporting to be an ANSWER to the COMPLAINT in the above captioned matter, filed by Steven Morey Greenberg, Esq. and purportedly on behalf of a funeral

parlor, located at 402 Park Street, Hackensack, referred to hereafter as Gutterman-Musicant, Inc., Gutterman-Musicant-Kreitzman, Inc., Gutterman-Musicant Funeral Directors, etc. The subject commercial property is located in a B-1 commercial strip zone and adjacent to an R-3B use district, medium denisty multi-family and offices. The subject funeral operation has functioned as such since 1975, and been known by the above names during that period.

REPLY TO ANSWER RELATING TO JURISDICTION

By way of reply to the suggestion of this defendant's Answer that it did not operate a psychiatric halfway house, had never done so, and thus the complaint was frivolous at least to this extent, recall that on January 31, 1984, the Hon. Sherwin D. Lester, J.S.C. wrote a letter opinion in the matter of Salvatore Moretti vs. Gutterman-Musicant, Inc., and D. J. Fredericks, Inc., Docket No. C-4913-83E in which a specific performance motion was brought to compel transfer of title to 387 Park Street, Hackensack (Block 418, Lot 24).This was the second contract to purchase between the parties, the first contract involved a check for $5,800.00 being placed with the broker, the second contract involved a deposit placed with D. J. Fredericks, the broker of record, and refusal to subsequently transfer title led to the filing of Docket No. 4913-83E. Plaintiff wrote on March 5, 1984 to the Chancery Court of Bergen County (cc. to Burton Cohen, Esq., then attorney of record for Gutterman-Musicant, Inc., owner of 387 Park Street, Hackensack):

...In June 1984 plaintiff was requires to file a a Temporary Restraining Order to halt demolition to the house standing vacant at 387 Park Street. The Contract purchaser, Jademar Industrial Corporation, had been granted permission to erect additional office space on an adjacent lot and had consequently

begun construction.

The Temporary Restrianing Order came on for hearing before Judge Sherwin Lester in Chancery. Judge Lester denied the TRO. [Olga Demartino] even suggests that derelicts have made the building a haven thereby requiring its demolition. Such statements run counter to plaintiff's attempts for many years...

While Gutterman-Musicant Funeral Directors, Inc. in its Answer (page 2) claims that it "denies same inclding any and all allegations that Gutterman-Musicant was involved with and/or ... owned...rented ...or was in any "way" whatsoever involved with any boarding house, rented home, North Jersey Friendship House, psychiatric half-way house, and/or any parking lot as alleged by plaintiff."

On October 30, 1981 Okin, Pressler, & Shapiro, Esqs. represented Gutterman-Musicant-Kreitzman, Inc. before the Appellate Division, Docket No. A-3806-80T1. In their Notice of Motion to Dismiss the Appeai under R. 2:8-3, this law firm claimed at page 4 that:

the defendant Friendship House, located immediately adjacent and contiguous to plaintiff's property on the north, is owned by defendant GMK (abbreviation for Gutterman-Musicant-Kreitzman, Inc.), and was leased to the defendant Friendhsip House (Pa-252; T2.83-1). Friendship House operated the premises as a halfway house and counseling facility under a boarding house license issued by The City of Hackensack. It must be noted that the defendant, Friendship House, ceased its operation in that location prior to the start of the trial...The defendant, GMK is the owner and operator of a funeral home located on the corner of Park and Passaic Streets in the City of Hackensack. ...Plaintiff's claim that the conduct and management of Friendship House was such that it constituted a

public and private nuisance which was detrimental to the plaintiff. The second claim alleges that GMK in conducting its funerals prohibited plaintiff and its tenants from having free access to their buildings... A trial on all of the above matters was held ...

U.S. Supreme Court, Oct. Term, 1993,
Moretti v. Zisa, et al., Petitioner's Appendix, Case No._____-
Reply to Answer Filed by Hackensack Water Co.
Represented by John Wallace, Dated
Dec. 16, 1992

SALVATORE MORETTI
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414
PLAINTIFF PRO SE

U.S. DISTRICT CT

SALVATORE MORETTI,
Plaintiff
vs.

MAYOR JOHN ZISA AND THE HACIKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSACK BOARD OF ADJUSTMENT; PATRICIA FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO - HACKENSACK PROSECUTOR; HACKENSACK WATER CO.; G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT, INC.,
Defendants

DIST.OF N.J.

CASE NO.92-4206(HAA)

REPLY TO ANSWER BY DEF.HACKENSACK WATER CO.

REPRESENTED BY:
JOHN P. WALLACE
216 E. RIDGEWOOD AV.
RIDGEWOOD, N.J.
(201) 445-3533

The plaintiff, Salvatore Moretti, received a document purporting to Answer the Complaint, said Answer dated November 5, 1992. While the Answer is signed by John P. Wallace, the Board of Regulatory

Commissioners, reputedly a Statutory Creation of the Public Utilities Commission, should have done so since the Attorney General's Office is the defendant's legal counsel in New Jersey - defendant is a monopoly created under Statutory law, N.J.S.A. Title 48 - Public Utilities. As to an Answer to the Jurisdictional Statement none appears at the heading of the Answer, but buried within jurisdictional objections appear, to wit Affirmative Defenses - No. 5: Service of Process was improperly effected upon the answering party and the answering party reserves the right to move to dismiss due to lack of jurisdiction. No. 6: - This Court does not have jurisdiction over the subject matter of this suit and the answering party reserves the right to move to dismiss due to lack of jurisdiction over the subject matter. No. 7: Plaintiff has failed to exhaust his administrative remedies. No. 1, No.2, No. 3, No. 4, No. 8, etc. taken collectively.

As to No. 5 - Service of Process - not only was the Board of Regulatory Commissioners Office served with a lawsuit in the Superior Court of New Jersey - Salvatore Moretti vs.Hackensack Water Company, and Board of Regulatory Commissioners, Docket No. BER-L-08191-92, but also they were named in said lawsuit, and appeared on motions in said lawsuit, represented by Michael Berman, Esq.. In addition, both Berman on behalf of Attorney General Del Tufo and Wallace submitted briefs to dismiss the lawsuit, resulting in its "dismissal" over plaintiff's objection. On September 16, 1992, plaintiff wrote to Judge Edward Van Tassel, J. S. C. that the lawsuit could not be dismissed due to the law in this jurisdiction with respect to water shut-off cases. That letter is included herein for this courts ready reference.

Salvatore Moretti
390 Park Street
Hackensack, New Jersey 07601
(201) 646-1414
September 16, 1992

Motions Clerk
Superior Court of New Jersey
Law Division - Bergen County
Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

Hon. E.Van Tassel,J.S.C.
Superior Court of N.J.
Chambers
Bergen Cty Justice Centr
10 Main Street
Hackensack, N.J. 07601

RE: Moretti v . Hackensack Water Co., and Bd. of Regulatory Commissioners, Docket No. BER-L-08191-92, Notice of Motion returnable Sept. 11, 1992. Second Demand for Oral Argument.

Hon. Judge Van Tassel & Motion Clerk:

As noted in my letters dated September 8, 1992 and September 14, 1992, (enc.) I have received improper papers in the above captioned matter. I noted that there was confusion in a number of respects, not the of least of which was that the cases cited were not responsive to the case I cited. I trust that this matter will either be heard on the reputed hearing date, September 18, 1992 as per the motion papers filed by the Deputy Attorney General, Michael Berman, or attorney's fees will be awarded reflecting the fact that I sat for three hours in your courtroom waiting for Mr. John P. Wallace(Hackensack Water Company) and Mr. Michael Berman(Board of Regulatory Commissioners, Public Utilities) to arrive.

I noted in my prior letters of the eighth and

fourteenth the impossibility of answering motion papers which were negligently drafted. Berman for example uses the following language in his papers: "office advised Moretti both of the proper Board regulations(?) relating to billing disputes...Moretti rebuffed ...Moretti failed to produce a list of the tenants...Moretti failed to offer a reason why the Court should exercise jurisdiction over the matter... Judge Eichen urged Moretti to file a complaint(?)... On August 17, 1992 the City of Hackensack agreed to pay all water bills to the Company pending a final determination of the matter..." This gibberish is essentially unanswerable. It seems to suggest either that the City of Hackensack has already paid the water bill, and hence the case is moot, or that I owe the City of Hackensack the amount they paid and the case may be continued on that basis -a simple theft- or that I did not serve the summons so that the case was improperly before the court on motion or...etc. Writing improperly dated papers (Dated for a non-existent motion hearing date) Berman appears to have said too much and the result was that he simply failed to appear on the day of the hearing. Does he state that I requested the City of Hackensack to pay my water bill, or does he rather clearly imply that, suggesting that the Municipal Judge then confiscate the rent checks from the welfare clients prior to my receipt of them? Either interpretation is possible. Drafting papers in this fashion is easy, but improper. Berman alleges that I failed to set forth a reason for the Court to hear my case, and hence the Court suggested filing a complaint with the Board of Regulatory Commissioners. The first fourteen words from Berman's procedural history is as follows: "This matter concern a billing dispute between Salvatore Moretti and the Hackensack Water Company" - that is

the reason the Court had jurisdiction...

What Berman seems to be avoiding is the law, namely that there is a good faith dispute exception which prevents water shut-off. 28 ALR 472, 112 ALR 237, Sims v. Alabama Water Company, 205 Ala 378, 87 So 688, Birmingham Waterworks Co. v. Keiley (1911) 2 Ala App. 629, 56 So. 838, (1912) 5 Ala App. 474, 59 So. 338, Birmingham Waterworks Co. v. Davis (1918) 16 Ala. App. 333, 77 So. 927, Louisville Tobacco Warehouse Co. Louisville Water Co. (1915) 162 Ky. 478, 172 S. W. 928, South West Suburban Water Co. v. Hardy (1913) 109 L.T.N.S. (Eng) 169, 77 J.P. 283, 23 Cox CC. 485; 11 L.G.R. 1001, Panton v. Duluth Gas & Water Co. (1892) 50 Minn. 175, 36 Am.St. Rep. 635, 52 N.W. 527, Nodd v. City of Atlanta 154 Ga. 33, 113 S.E. 166, Utilities Operating Co. v. Pringle, 177 So. 2d. 684, Mobile Electric v. Nelson, 96 So. 713, 104 So. 407, Spaulding Mfg. Co. v. Grinnell, 155 Iowa 500, 136 N.W. 649, Benson v. Paris Mountain Water Co., 88 S. C. 351, 70 S.E. 897, Southwest Suburban Water Co. v. Guardians of the Poor (1904) 2 K.B. 174, 73 L.J.B.B.N.S. 347, 68 J.P. 257, 52 Week. Rep. 378, 20 Times L.R. 299, 2 L.G.R. 567, Sedalia Brewing Co. v. Sedalia Waterworks Co., 34 Mo. App. 49, Washington v. Washington Waterworks Co., 70 N.J.Esq. 254, 62 Atl. 390, McEntee v. Kingston Water Co., 165 N.Y. 27, 58 N.E. 785, Poole v. Paris Mountain Water Co. 81 S.C. 438, 128 Am.St. Rep. 923, 62 S.E. 874... Cases holding that an injunction should issue are: **Carter v. Suburban Water Co., 131 Md. 91, 101 Atl. 771, Gordon & Ferguson v. Doran, 100 Minn. 343, 111 N.W. 272, Mansfield v. Humphreys Mfg. Co., 92 N.E. 233, American Conduit Mfg. v. Kensington Water, 83 Atl. 70, Edwards v. Milledgeville Water Co. 42 S.E. 417, Royal v. Cordele, 63 S.E. 826, Bienville Water Supply Co. v. Mobile, 20**

So. 742, Mongomery v. Greene, 60 So. 900, Hoover v. Deffenbaugh, 119 N.W. 1130, Van Ness Land & Improvement Co. v. N.Y. & W. Water Co., 40 N.Y. Supp. 212, Foster v. Monroe, 82 N.Y. Supp. 653, 40 Misc. 449, **Mansfield v. Humphreys Mfg.,** 92 N.E. 233....

During pendency of said Superior Court case, the District Court case was filed, placing defendant water company on notice that both state and federal rules applied. To claim lack of Notice or Proper Service on behalf of the State is thereby improper, since when they have notice, they reject it, claiming they wish to proceed to an administrative hearing, but then demand immediate payment (threatening shut-off) of over $9,000 of water bills for water clearly not used by defendant. Such alternative claims by this defendant have prevented settlement since four years of Notices were sent to it demanding relief from illegal billing practices. No Notice was answered, all were duly received by the defendants and their legal department - the Attorney General's Office. In the State Action relied upon, defendant claimed lack of Notice as well, suggesting their claims are fraudulent. The relevant documents issuing out of the defendant's legal departments are attached hereto and made a part hereof.

... Here, plaintiff argued for the genuineness of the bill dispute on December 3, 1992 before Hon. Louis J. Dinice, Hackensack Municipal Court Judge, Patricia Farlie vs. Salvatore Moretti, Docket No. 92-3016. At that hearing an exhibit was marked D-7 which shows eight comparables with water bills adjusted for twenty apartment units.

The comparables show Billing for the last three months and the last twelve months, and Water Consumption for the last three months and the last twelve months

as follows:

The plaintiff's property, Park Court Apartments was billed for each quarter 356,773 gallons (each year 1,395,122) more than the eight comparables. The comparative costs resulted in 107% higher bills per quarter and 130.9% higher each year for Park Court than for the comparables.

Despite the material above, defendant through its attorney John P. Wallace filed a motion on December 2, 1992 with the Bergen County Special Civil Part Docket No. 705907 to dismiss the case filed for overpayment by plaintiff for the last three years (as per the certification by Ann Fasciano), for a longer period if this practice is shown to have predated the certification. That certification is attached hereto in the appendix...

Moretti v. Hackensack Water Co. and Board of Regulatory Commissioners, Docket No. BER-L-08191-92, Order dated October 13, 1992. The order was arrived at without a motion hearing, without consideration of the papers submitted, and without oral argument allowed, and without submission of answers to interrogatories required under the relevant court rules cited in the appendix shown herein.

On August 13, 1992, the Hackensack Water Company shut off the water for the first time at 4:15 p.m. in the afternoon, leaving the water off until 3 p.m. on Friday, and then turning the water back off on Monday, Aug. 17, 1992 9 am and leaving it off for twenty-four hours. On August 13, 1992 an interlocutory injunction was filed with the Appellate Division, while on Remand from the Appellate Division plaintiff appeared before Judge Patrick Fitzpatrick on August 17, 1992. There plaintiff was unceremoniously arrested and jailed under a warrant signed by Patricia Farlie, issuing

out of the municipal court. This began a series of hearings held before the Hackensack Municipal Court, under the title of Patricia Farlie vs. Salvatore Moretti on August 19, 1992, August 26, 1992, September 2, 1992, October 7, 14, and 28, 1992, November 2, and 4, 1992, and December 3, 1992...

Salvatore Moretti
390 Park Street
Hackensack, New Jersey 07601-4307
(201) 646 - 1414

August 7, 1991

Hackensack Water Company
200 Old Hook Road
Harrington Park, New Jersey 07640

Re: Water Bill, Account No. 06-185-19050-1, Service Address at 391-5 Park St., Hackensack (Park Court Apartments); Billing Date July 15, 1991, Meter No. 8821071 - Neptune Water Meter #2126 - From 4/10/91-7/11/91. Consumption for Current Period was 819,060 gallons. Amount Due for Quarter = $2,470.72 Payable on or before July 25, 1991.

Dear Sirs:

My most recent water bill of $2,470.72 comes at a time when absolutely no watering of the lawn was permitted (to prevent excess water use). Also, several apartments (20 units make up the building) were undergoing painting and were unoccupied. Plumbing was tight off in empty units.

A quarterly use of 819,060 gallons figures to 9101 gallons per day, or 535 gal. per day per occupied apt.Each apt. has only one bedroom, one toilet, one shower, and two small sinks. The laundry room is

for tenants only.Figuring tenants days at 9 hours asleep, 9 hours at work/shopping/traveling/church/ visiting, and 6 hours at home results in 6 hours to use 535 gallons of water per apt. With less than 2 people per unit, and with a law now in effect that each toilet uses only 3.5 gallons per flush, we have 89 gal. per hr. @ 3.5 gal. per flush or 25.4! flushes per hour. One flush takes 75 seconds,so that the toilets would have to flush at 53% of maximum to reach your figure - a logical impossibility for one and two tenant apts. A number of apts have water constrictors, and the wood construction makes plumbing sounds travel through the building; a clue to excess water use would show up immediately. Water meter inspections show that you simply have a fast meter, in plain language.

I enclose letters to you dated August 6, 1987 and July 28, each during the summer-hot weather season when no watering of lawn took place. 4/7/87-7/9/87 shows 334,356 gal costing $1807, while 4/14/89-7/12/ 89 shows 243,848 gal costing $646.41. The bill went down 90,000 galloons or 25%, then up 575,000 gallons or 235%. Clearly, there is no rime or reason to your billing practices over the years, excepting that you continuously complain (standard for the apt. house industry) you can't get in,the super's not around. In the case here, there is a management office on site. In fact, when I asked whether your personnel driving the water truck wanted to read the meter, they declined several times. Your letters come anyway...

SALVATORE MORETTI
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414,
PLAINTIFF PRO SE

In The Supreme Court, Moretti v. Zisa, Et. al.No._____- Appendix by Petioner Oct. Term, 1993.Brief upon Receipt of Judge Ackerman's Opinion U. S.DISTRICT COURT

SALVATORE MORETTI, Plaintiff vs. MAYOR JOHN ZISA AND THE HACIKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSACK BOARD OF ADJUSTMENT; PATRICIA FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO - HACKENSACK PROSECUTOR; HACKENSACK WATER CO.; G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT, INC., Defendants	DISTRICT OF N.J. CASE NO. 92-4206 BRIEF IN REPLY TO GRANTING OF DEFENDANTS' MOTIONS FOR DISMISSAL UNDER R. 12(b)(6)

The plaintiff, Salvatore Moretti, received a written opinion by Hon. Harold A. Ackerman on May 8, 1993 in which the complaint in this above entitled matter is dismissed. However, the dismissal was stayed for fifteen days so that "plaintiff may amend his complaint if he so chooses. In addition, defendants' motions for sanctions are denied without prejudice."

It is apparent that plaintiff proceeded to both scheduling conferences before Magistrate Chesler and requested emergency applications for injunctive relief from the continuing actions of the defendants

which included two arrests and incarcerations. On one such occassion, the police, defendant within, took a complaint from a party against whom plaintiff had obtained a Special Civil Part Judgement. The police knew full well that the complainant was released from jail awaiting trial, since they had arrested the complainant. Nevertheless, with over a three thousand dollar judgement recorded against the complainant, plaintiff herein was arrested on the basis of theft - to wit "stealing the very money which was used to pay bail for the complainant. This and numerous other acts of defendants within require injunctive relief. The fact that injunctive relief had been applied for, and denied, by the New Jersey Appellate Division in re the defendant Hackensack Water Company, which had cut off plaintiff's water supply, has already been discussed in great detail in the complaint and the reply to the Hackensack Water Co...

POINT FIVE

UPON WHAT READING OF THE FACTS AND LAW IS THE DISMISSAL OF THE MORRISSEY AND THE HACKENSACK POLICE DEPARTMEWNT AND FIRE DEPARTMENT BASED?

Following are brief excerpts from material relating to the break into the apartment of a tenant at Park Court Apartments. The issues are tresspass, breaking and entry, without a search warrant, without probable cause, of a recipient of welfare. This is a failry typical case and the facts and law remain very similar from one day to the next, into the distant future.

C Morrissey and the Hackensack Police Department Appeal to the New Jersey Appellate Division of the Trial relating to the Break-In committed by C. Morrissey the Hackensack Police and Hackensack Fire Depart-

ments Excerpts from Plaintiff's Brief

BRIEF APPEALING FROM JUDGEMENT BELOW

PROCEDURAL HISTORY

On July 20, 1992, Plaintiff Salvatore Moretti filed a complaint in the Special Civil Part of the Superior Court, Bergen County, against Edwina Alexis, the Hackensack Police Department, and the Hackensack Fire Department, Case no. DC-700124 (Pa2). The complaint alleged that on June 14, 1992, the Hackensack Police Department and the Hackensack Fire Department broke into Apartment 397-B Park Street, Hackensack at 12:30 p.m. The suit had an ad damnum clause of $950.00 forphysical breakage alone (Pa2). On July 24, 1992, Richard E. Salkin, Esq. filed an Answer denying the allegations in the Complaint, and claiming that the New Jersey Tort Claims Act, N. J. S. A. 59: 1-1, et seq. barred the claim (Pa3). On July 23, 1992, Edwina Alexis filed her Answer, claiming that "the plaintiff is at fault (Pa5)." On September 4, 1992, plaintiff served Interrogatories on the Hackensack Fire Department via Certified Mail, No. P033-908-650, RRR (Pa6). On September 4, 1992, plaintiff served Interrogatories on the Hackensack Police Department, via Certified Mail No. P008-773-899, RRR (Pa7)... The trial began at 11:10 a.m. on Friday, January 15, 1993. Plaintiff, Edwina Alexis, and Craig Morrisey were sworn in.Richard Salkin, Esq. was present on behalf of the City of Hackensack, the Fire Department, and the Police Department. Plaintiff offered the court the Alexis lease dated April 6, 1992 (Pa6), and Answers to Interrogatories provided by the Fire Department (marked D-1 Evidence)(Pa40), and Answers to Interrogatories provided by the Police Department (marked D-2 Evidence) (Pa51). Plaintiff called Craig Morrisey to the witness stand and examined Morrisey on the events of the day in question, July 14, 1992

between 12 and 1 p.m. at Apartment 397-B Park Street, Hackensack.

Morrisey conceded that the complaint was correct in that the events described therein took place. His testimony was interrupted by the objection of Richard Salkin when he testified that there was a problem at police headquarters relating to the Alexis matter. He had been given the interrogatories to evaluate what the problem was, and Morrisey read through the interrogatories and attempted to answer the questions, but for the objection of Mr. Salkin, attorney for the city.

At his point, and within ten minutes of the beginning of trial, Mr. Salkin's objection became heated, claiming that plaintiff should not have called Morrisey to the witness stand, and that the testimony was a problem to him. In order to appease Salkin, Judge Isabel Stark stated that she would hold plaintiff in contempt if he uttered a single word more. She elaborated that she would in addition to contempt fine plaintiff $50.00 for each word he spoke at the trial in the action. Plaintiff claimed that a finding of contempt was not justified by the trial of the case which had just begun ten minutes ago, and that it was impossible to know how, or whether to proceed without a determination of the nature of the contempt. He inquired for an explanation of the contempt being charged. No explanation was forthcoming from either Judge Stark or counsel for the City of Hackensack. Considering that the nature of the disagreement was to certified answers to interrogatories provided by the City of Hackensack, plaintiff insisted that these answers be marked into evidence by the court and that some explanation be forthcoming as to the contempt alleged...

However, Morrisey had already answered several questions with no objection from Salkin until Morrisey remarked that there was a discrepancy between headquarters and the interrogatories...Judge Stark stated with finality, "I will not allow you to procede."

FACTUAL HISTORY

On June 14, 1992, at 12:06 p.m. two Hackensack Policemen, Craig Morrisey and Thomas Salcedo entered the grounds of Park Court Apartments (Pa58). Their intended purpose was not made known to the onsite management office, but shortly it became evident that they intended to break into the apartment of Edwina Alexis, Apartment 397-B Park Street, Hackensack... Morrisey then said that he would call the fire department and have them break the door down because plaintiff refused to cooperate in getting into the apartment. Morrisey in fact then called the fire department for assistance (Pa48).

At 12:16 a.m. the Fire Department received a call from the Police Department for assistance in gaining access to 397-B Park Street, Hackensack (Pa48). The Fire Department dispatched a Fire Truck and three men entered the grounds carrying fire axes to break down the door. When they entered the grounds, they refused to discuss the problem with the management office, failed to speak to the superintendant or any tenants on the property, and Officer Morrisey informed plaintiff that he would be arrested if he tried to talk to anyone from the fire department.

The Fire Department immediately went to the task of breaking into the apartment, using a Hurst brand rabbit tool - a hydraulic tool (Pa44) which prys open doors. The dead bolted door was forced open at 12:25 p.m. The use of the tool plus several men banging

against the door resulted in the twisting of the door and the jamb out of shape bending the door at a 45 degree angle and pulling the jamb off the wall (Pa44). The Fire Department broke into 397-B Park Street because they alleged they were told to do so by the police department, and Officer Morrisey, in particular, and that this is standard policy (Pa43)...

The Hackensack Police Department Investigation Report Case No. 9215409 states that "Hackensack Fire Truck 306 responded and gained entry (Pa58). The apartment was found to be empty (Pa56). After determining that the apartment was empty, the victim's medication was found in the apartment (Pa56). An alarm was given to headquarters. All radio cars were notified to be on the lookout for the victim (Pa59)."